THE COMMON *and* STATUTE LAW OF ENGLAND, CONCERNING TRIALS IN High-Treason, Miſpriſion of Treaſon, And in all other Crimes and Offences relating to the Crown;

Briefly collected out of the Common and Statute Law-Books and Trials relating to that Subject: Alphabetically digeſted under proper Titles; wherein the Learning of Appeals is at large ſet forth under the ſame Head. The Whole is brought down to this preſent Year 1710. With an exact Table.

By *W. J.* Barriſter at Law.

Very uſeful for all Barriſters, Attorneys, Juſtices of Peace, and for all others that have, or may have Occaſion to be concern'd in ſuch Matters.

In the SAVOY:
Printed by John Nutt, *Aſſignee of* Edward Sayer *Eſq; for* John Walthoe *in the* Temple-Cloyſters. 1710.

FH
MVSEVM
BRITANNICVM

TO THE READER.

THough it can be no proper Apology for this Treatiſe to pretend, nor reaſonable Suppoſition, that the Reader will expect a compleat Syſtem of the *Crown-Law* in ſo ſmall a Volume; yet I have endeavoured, as briefly as I could, to collect all the Antient and Modern Caſes and Reſolutions of the Law, as well as the Statutes, (as far as was neceſſary) to this preſent Year 1710, and to digeſt the ſame in an

Alphabetical Order, under proper Titles, which I conceived to be the beſt and readieſt Way for the Reader to find out any of the principal Matters herein contained. I confeſs, ſeveral great Men have wrote upon this Subject before me; whoſe Works have been, and deſervedly are, highly eſteemed by the Profeſſors of our Law, *viz.* Sir *William Stamford*, Lord *Coke*, Mr. *Pulton*, Chief Juſtice *Hales*, and Lord Chief Juſtice *Kelyng*. None of which Treatiſes have been written ſince the Reſtoration of King *Charles* the Second, except that of Juſtice *Kelyng*; which yet it ſeems brings his Caſes no lower

lower than the Year 1666. And in the Preface to my Lord *Hales*'s *Pleas* of the the *Crown*, the Publisher thereof informs us, that it was wrote in the latter End of King *Charles* the First. From which Instances 'tis manifest, no one has wrote designedly on this Subject for these 50 Years past, although Two of the greatest Changes and Revolutions in this Kingdom have happened in that Time; and which have produced more Statutes, and Resolutions of Cases consequent thereto, by the Learned Judges, than in any preceding Age. By Reason whereof, such Alterations have been made

made in our Common and Statute-Law in Criminal Caſes, that I perſwaded my-ſelf, a Treatiſe of this Nature would be as welcome as it ſeemed to me really wanting. Alſo I might farther alledge, That what with the different Judgment of the Bench, and the often making and repealing of the Statutes, the Knowledge of the Crown-Law is become difficult; ſo that one Part of the Time uſually allotted for the Study of the Common-Law in General, is ſcarce ſufficient for this Branch of it in particular: Which being premiſed, I hope the Reader will kindly accept of my good Intent, in accommodating him with theſe my Endeavours collected

lected with no ſmall Labour and Application; and alſo as favourably excuſe or correct what Faults may have eſcaped either Pen or Preſs. 'Tis true, the Doctrine of Appeals is of Old Standing, yet it has long lain as 'twere dorment, until of late ſome modern Caſes have awaken'd it. And ſince the Bench hath favoured that Law, I have for the ſame Reaſon been more prolix on that Title, than in any other of the Diviſions; and therefore have perſued it thro' all the ſeveral Branches. And now from the Whole, I hope the Reader will receive Satisfaction fully equivalent to his moſt ſerious Peruſal of this Treatiſe.

Vale & Fruere.

BOOKS made use of by the Author in his References.

Reports.

Anderson.
Bulstrode.
Coke.
Croke.
Cases in Parliament.
Dyer.
Godbolt.
Hobart.
Jones VVill.
Jones Tho.
Keble.
Kelway.
Keling.
Leonard.
Littleton.
Latch.
Modern. *in* 4 *Vol.*
Noy.
Raymond.
Showers.
Siderfin.
Saunders.
Styles.
Ventris.
Yelverton.

Miscellanies.

Statutes at large.
Coke's *Institutes.* 1234.
Hale's *Pleas.*
Broke's *Abr.*
Fitzherbert's *Abr.*
Coke's *Entries.*
Rastall's *Ent.*
Brown's *Ent.*
Browlow's Redivivus.
Levinz *Ent.*
Aston's *Ent.*
Danver's *Abr.*
Roll's *Abr.*
Townsend's *Tables.* 2 parts.
Cowell's *Law Dict.*
Hansnod's *Ent.*
Term's *Law.*
Molly *de Jure Maritimo.*
Stamford's *Plea of the Crown.*
Pulton *de Pace Regis.*

Trials.

Coleman.
Charnock.
Colledge.
Green.
Hambden.
Ireland.
Five Jesuits.
Langhorn.
Ld. Mohun.
Oates 1st and 2d.
Ld. Russell.
Reading's
Rouse.
Rockwood.
Sidney.
Ld. Stafford.
VVakeman.

SOME

SOME BRIEF OBSERVATIONS Relating to the CROWN-LAW.

ABETTORS.

ABETTORS of Appeals, are they which, without juſt Cauſe, procure others to ſue falſe Appeals of Murther or Felony againſt Men, to the Intent to trouble and grieve them, and to bring them to Infamy and Slander.

Upon a falſe Appeal, the Abettor, if the Appellor be not able, ſhall be impriſoned a Year, and pay Dammage, *&c.* 13 *Ed.* 1. *cap.* 12. *W.* 2.

Abettors in Murders, are thoſe that command, procure, counſel or comfort others to murder; and in ſome Caſes, ſuch Abettors were taken as Principals; and in others, but as Acceſſaries; ſo in other, Felonies.

And their Preſence at the Deed doing, and their Abſence, maketh a Difference in the Caſe.

There are Abettors alſo in Treaſon, but they are in ſuch caſe as Principals; for in Treaſon, there are no Acceſſaries. *Vide Terms*

de le Ley. verb. Abettors. *Vide poſtea, verb.* Acceſſary & Approvers: Alſo, *vide poſtea* Aiders.

Abjuration.

NOTE, that Sanctuary, and the Conſequents, Abjuration were ouſted by the Statute 21 *Jac. cap.* 28. *v. Hale P. C.* 228.

Where Caſes of Abjuration were allowed, *vide* Holbourne's *Readings, with Caſes of Treaſon,* &c. *by Sir* F. Bacon, *pag.* 103. yet ſee *Charta Foreſtæ, cap.* 10. Abjuration for want of ſufficient Sureties: There is alſo an Abjuration for Non-Conformity, by *Stat.* 35 *Eliz. cap.* 1.

The Statute of 21 *Jac. cap.* 28. *par.* 6. enacts, That ſo much of all Statutes as concerns the taking away of Sanctuaries, be revived; and *par.* 7. it is alſo enacted, That no Sanctuary, or Privilege of Sanctuary, ſhould thereafter be admitted or allowed in any Caſe: And in *Keb. Stat. fol.* 1088, *par.* 7. 'tis referred to 22 *H.* 8. *c.* 14. wherein is ſet forth ſome Inconveniences concerning Perſons abjuring, and in what manner Perſons committing Petty Treaſon ſhould abjure, together with their Oath, and of their being conveyed to Sanctuaries of their own chooſing, and their Behaviour there.

Yet in *Stat.* 13 & 14 *Car.* 1. *cap.* 1. *numb.* 11. there is a Penalty to abjure, or elſe to be tranſported to ſome of His Majeſty's Plantations; but that of Abjuration ſeems to be a Paradox, becauſe it is a Penalty againſt ſuch

ſuch Perſons as refuſed to take lawful Oaths.

Note: There is an Oath to be taken, call'd, *The Abjuration Oath*; for which, ſee Stat. *Ann. cap.* 22.

Acceſſary, Vide *Principal.*

IF the Principal be acquitted, or convict only of Manſlaughter, or *ſe defendendo*, or before Attainder hath his Clergy or Pardon, or die, the Acceſſary ſhall not be arraigned. So if the Principal ſtand mute. *Hale P. C.* 221.

If the Principal appears not, the Acceſſary ſhall not be tried, unleſs he will. *Ibid.* 222.

Where a new Felony is made by Statute, it ſeems that there is no Acceſſary, unleſs ſpecially enacted. *Id.* 223. *Quære*, for *Co.* 3. *Inſt.* 72. is otherwiſe.

A Man may be Acceſſary to an Acceſſary, and the ſame Man be Principal and Acceſſary where Felony is done by divers. *Hale P. C.* 219. But an Acceſſary cannot be, unleſs a Felony be committed. *Ibid.*

By *Stat.* 3 *Ed.* 1. *cap.* 14. in an Appeal, the Acceſſary ſhall not be outlawed till the Principal be attainted, *&c.*

Note, That in Treaſon there are no Acceſſaries, but all Principals: But a Procurer before, or a Receiver knowingly after, is guilty as Principal. *Hale P. C.* 215. And by 4 *&* 5 *P. & M. cap.* 4. Acceſſaries in Petty-Treaſon, Murder and Felony, were debarred of the Benefit of Clergy.

The Acceſſary cannot be guilty of Petit-Treaſon, where the Principal is but Murther. *Id.*

If divers come to commit Felony, and are preſent at the Time, tho' one of them only doth it, they are all Principals, *Ib. Aliter* if one come caſually, and not of the Confederacy. *Id.* 216.

That in ſome Caſes a Perſon abſent may be Principal. *Ibid.*

There may be Acceſſaries before a Felony; as he that commandeth or aſſenteth to the committing a Felony, and is abſent when done. *Id.* 217.

Alſo Acceſſaries after; as the Receipt of a Felon, or the Goods from another Felon, alſo relieving a Felon with Money, Victuals, Horſe for his Journey, *&c.* *Id.* 218.

Yet every Receipt to make an Acceſſary, muſt be knowing to him to be ſuch. *Ibid.*

By 2 & 3 *Ed.* 6. *cap.* 24. *par.* 4. Acceſſary ſhall be tried where acceſſary, wherever the principal Fact be. *ibm.* 223.

A Man being acquitted as Principal, cannot be arraigned as Acceſſary; but if acquitted as Acceſſary, he may be arraigned as Principal. *Id.* 224.

One acquitted of the principal Fact, cannot after be arraigned as Acceſſary before the Fact, but he may be arraigned again as Acceſſary after the Fact; for an Acceſſary after is not guilty in any ſort of committing the Fact, for it was done before he knew any thing of it: Therefore if he be tried as Principal, and found not guilty, he may be after indicted as Acceſſary after; as for receiving

ceiving the Felons, *&c.* which is an Offence of another Nature. *Kel. Rep.* 25, 26.

Where there are two Principals, and one Acceſſary, if one of the Principals be found not guilty, the Acceſſary is diſcharged. *Co. 2 Inſt.* 183.

By 3 *&* 4 *W. & M. cap.* 9. Perſons buying or receiving of ſtolen Goods, knowing them to be ſtolen, ſhall be deemed Acceſſaries to the Felony after the Fact. *Vide* Clergy.

By *Stat.* 1. *Annæ Reg. cap.* 9. If the Principal be convict of Felony, ſtand mute, or challenge peremptorily above 20 Jurors, the Acceſſary may be proceeded againſt, as if ſuch principal Felon had been attainted, notwithſtanding ſuch Principal be admitted to his Clergy, pardon'd, or otherwiſe delivered before Attainder.

And ſuch Acceſſary convicted, if he ſtands mute, or challenges as aforeſaid, ſhall ſuffer as if the Principal had been attainted.

Alſo Buyers and Receivers of ſtolen Goods knowingly, may be proſecuted for a Miſdemeanor before the Principal be convicted, which ſhall exempt them from being puniſhed as Acceſſary when Principal is convicted. The like Proviſion by 5 *Annæ, cap.* 31. *Vide* Appeal, Arraignment, Attainder, Bar, Burglary, Felony, *&c.*

It is ſaid, That one that is preſent and aiding to the Stabbing of another, is not a Principal, but only an Acceſſary to the Stabbing, within the Act of 1 *Jac.* 1. that made Stabbing to be Murder, for that the Act ſhall not be largely interpreted, becauſe ſo penal. *Vide Stil's Pract. Reg. laſt pub.* 518.

Concerning the Trials of Acceſſaries to Felonies, committed by *Engliſhmen* in *Scotland*, & *e contra*. *Vide* 4 *Jac.* 1. *c.* 1.

Accuſation.

BY 5. *Ed.* 3. *cap.* 9. None ſhall be attached by Accuſation, againſt the Form of the Great Charter, and the Law of the Land.

By the Statute 37 *E.* 3. *c.* 18. Promoters of Suggeſtions to the King were to incur the Pain which the Accuſed ſhould ſuffer, in caſe the Suggeſtion held not; but that Clauſe was repealed by 38 *E.* 3. *c.* 9. and the Penalty changed into Fine and Impriſonment, and Dammages to the Party grieved.

And by 42 *E.* 3. *c.* 3. None ſhall be put to anſwer an Accuſation to the King, without Preſentment, or ſome Matter of Record; and what is done otherwiſe, ſhall be void, and holden for Error.

Acquittal.

Vide Action *and Auterfoits, &c.*

TWO were indicted for a Confederacy, one of them was acquitted, and the other found guilty; the Acquittal of one, is the Diſcharge of the other. 3 *Mod. Rep.* 220.

Action

Action.

ACTION lies after Trial and Acquittal (of Felony) for unjuſt and malicious Proſecution: 400 *l.* Dammages were recovered in the *Common Pleas* after Trial in the *King's Bench.* The Caſe of the five *Frenchmen*, *Vide Lord* Hollis's *Narrative*, *p.* 42. *Vide Gen. Abridg.* 207, 208, &c. See for Precedents of ſuch Actions, in *Townſend's* Tables, and *Cornwal's* Tables, *Tit. Action ſur le Caſe*, *Tit. de Impoſition Criminum*, *&* *Tit. de Indictamentis.*

Additions.

Of Additions in Actions, Appeals and Indictments.

BY 1 *H.* 5. *cap.* 5. it is enacted, That in Originals in perſonal Actions, Appeals and Indictments, where the Exigent ſhall be awarded againſt the Defendant, Additions ſhall be made of their Eſtate, Degree, or Myſtery, and of the Towns, Hamlets, or Places, and Counties of or in which they be or were converſant; otherways Outlawries thereupon ſhall be void, and before Outlawry the Writs or Indictments ſhall be abated by Exception of the Party for want thereof: And tho' the Writs therein vary from the Records, Deeds, *&c.* they ſhall not abate, *&c.*

Writs varying from the Records.

The Intent of this Act was, That the Defendant ſhould be ſo certainly deſcribed, that one Man ſhould not be troubled for another. *Vide* 4 *Leon.* 121. 2 *Rol. Rep.* 225. 2 *Inſt.* 665, 670. *Vide Hal. Pl. Coron.* 243.

The Intent of the Act.

Misnosmer of Sirname.

If a Prisoner plead Misnosmer of his Sirname unto an Appeal, it goes in Abatement: But in case of Indictment, he shall be put to answer the Treason or Felony. *St. P. C.* 181. 1 *H.* 5. *c.* 5.

Simile of Christian Name.

But Misnosmer of the Christian Names goes in Abatement; and if it be confessed by the King's Attorney, or found, the Indictment falls, *ibid. &* 11 *H.* 4. *Coron.* 88. But then he must give his true Name, and by that Name he may be forthwith indicted, *H. P. C.* 243.

Reversal for want of Addition.

It was presented before the Coroner, That *J. S.* was *Felo de se*, and that certain of his Goods were in the Possession of *J. N.* and this was removed in *B. R.* and he was outlaw'd thereupon, and it was reversed, because *J. N.* had no Addition. *Vide* 2 *Leon.* 200. But one Defendant shall not plead the Falsity or Want of Addition of the other. *Fitz. Coron.* 43, 64.

Estopel.

In an *Excommunicato capiendo.*

By 5 *Eliz. cap.* 23. If in an *Excommunicato capiendo*, the Excommunicate hath not a sufficient Addition according to the 1 *H.* 5. *cap.* 5. he shall not incur the Penalties of the said Act. 5 *Eliz. Vide* 3 *Mod.* 42, 43. 1 *Jon.* 262. 2 *Jon.* 90.

Addition of Jurors.

And by 27 *Eliz. cap.* 7. No Juror shall be return'd, without the Addition of his Place of Abode at that time, or within a Year before, or other Addition by which he may be known, and no Extract of Issues shall be delivered out, received, or put in ure without such Addition, as in the Original Panel, or Tales upon Pain, *&c.*

Generosa. Spinster.

It is said, That *Generosa* is a good Addition; and if a Gentlewoman be named Spinster in

in any Original Writ, *&c.* Appeal or Indictment, ſhe may abate and quaſh it, for ſhe hath as good Right to that Addition, as a Dutcheſs, Marchioneſs, *&c.* have to theirs, 2. *Inſt.* 668. Yet it is ſaid, Widow, or Single Woman are good Additions, *Fitz.* Additions, 5 *Br.* Additions 56, 64, 66.

Widow. Single Woman.

If a Man be indicted by the Name of *J. S. de parochia de* Aldgate, and it is not ſhewed in what County *Aldgate* lies, it ſhall be quaſh'd, *Trin.* 5 *Jac.* Leeches *Caſe*, *Cro. Jac.* 167. An Indictment quaſh'd accordingly, notwithſtanding *Middleſex* was in the Margin, and it was objected, the Pariſh ſhould be intended to refer thereto, for an Indictment ſhall not be made good by Intendment, and the County in the Margin referr'd to the Place where the Fact was committed. *Vide* Stiles *Rep.* 26. *&* 3 *Mod.* 139.

Indictment quaſhed, for not ſhewing in what County the Pariſh was.

Yet the Addition of the Parties indicted may be in *Engliſh*, as *Weaver*, *Confectioner*, &c. 1 *Syd.* 101. *&* 1 *Keb.* 438. *int. Dom. Regem & March & al.*

Addition in Engliſh.

Eighteen by Name, and one *J. S. de H.* Yeoman, were indicted, and becauſe there was no Addition where the 18 dwelt, the Indictment was quaſh'd; for tho' Yeoman might go to all, yet it was held, that *H.* extended only to *J. S.* 1 *Bul.* 183.

18 with J. S. Yeoman, indicted, &c.

If *J. S.* is indicted for the Death of his Wife *A. S.* and the Indictment is, That the ſaid *A. S.* his Wife *fuit in pace Dom. Regis, quouſq; pred' J. S. Vir præfat. A. S. de H. in com' pred' Yeoman*, &c. This Addition is ſaid to be well enough; for tho' by the Rule of Conſtruction, *Ad ultimum antecedens fiat relatio*,

Rule of Conſtruction.

Ad ultimum antecedens, &c.

Yet, &c.

relatio, yet it cannot be ſo here; for the Yeoman cannot refer to the Woman, but to the Man. *Paſ.* 31 & 32 *H.* 8. *Dyer* 47. *Pl.* 2, 3, 4.

A Man may be a Spinſter.

But if *A. S.* be indicted by the Name of *A. S. nuper de T. in Com. E. Uxor J. S.* Spinſter; This, it's ſaid, is no good Addition, for a Man may be a Spinſter; ſo that by the Rule, *Ad ultimum antecedens, &c.* Spinſter refers to the Husband, and not to the Wife. *Ibid. Dy.* 3. cited and admitted *per Cur. Vide* 1 *Syd.* 247.

Addition ought to be *in primo Nomine*, and not after an *Alias dict.*

The Addition, as well of the Eſtate, Degree, or Myſtery, as of the Town, *&c.* ought to be alledg'd *in primo Nomine*, and not after an *Alias dict.* for the proper Uſe of an *Alias dict.* is only to agree with the Record or Specialty upon which the Writ is founded, and is not traverſable. 2 *Inſt.* 669. 1 *Bulſt.* 216. And if it is alledged after the *Alias dict.* it is void, and as no Addition. *Vide* 2 *Leon.* 183. *Cro. Eliz.* 198, 249. 1 *Ventr.* 13.

Advantage loſt by Appearance, *&c.*

And if the Defendant have no ſuch Addition as the Act requires, and yet appears upon Proceſs, and pleads, taking no Advantage thereof by Exception, he hath loſt the Benefit of the Act. 2 *Inſt.* 670. *Cro. Jac.* 610. 1 *Rol. Abrid.* 780. *Pl.* 80. *& vide* 1 *Syd.* 247. 1 *Keb.* 885. where it is ſaid, a bad or no Addition is cured by the Appearance of the Parties.

In Civil Pleas ſome Additions *ad Libitum.*

In Civil Pleadings, it ſeems, the Additions of Eſquire, Gentleman, Yeoman, *&c.* are no Part of the Name, but Additions *ad Libitum*, and as People pleaſe to call them. *Stiles Pract. Reg.* 80.

But

But the Title of Knight and Baronet is part of the Party's Name, and is material to be rightly uſed in Pleadings. *Ibid.* — Knight and Baronet.

The Title of an Earl of *Ireland* is not an Addition of Honour here in *England*; but an *Iriſh* Earl in our Law is written by his Chriſtian Name and Sirname, with the Addition of Eſquire only. *Ibid.* — Earl of Ireland.

ſſ. Abatement for miſnaming the Chriſtian Name. *Raſt. Entr.* 296. *Hern's Preſ.* 1, 9. *Thomp.* 1. *Clift.* 16. — Miſnoſmer of Chriſtian Name.

ſſ. The like for miſnaming the Sirname, *Hern.* 1. *Raſt. Ent.* 49, 50, 108, 296, 298, 610, *&c.* 1 *Brown's Ent.* 3. *Thompſ.* 1. — Of Sirname.

ſſ. Nul tiel Perſon. in rerum natura. Raſt. Ent. 49, 92. *Hern.* 5, 6. *Dyer* 348. *Plo.* 89. *Simile & Rep. p. Attorn. in nomine Magiſtr. Placita Gen.* 8. — Nul tiel Perſon.

ſſ. Nul tiel Vill in Com. Raſt. 108, 298. *Dyer* 227. *Co. Ent.* 121. — Null tiel Vill.

ſſ. That he was dwelling at *E.* and not at *F.* &c. *Raſt.* 108, 126, 160, 300, *&c.* 1 *Brown's Ent.* 6. — Comorancy.

That he is a Gentleman, and not a Yeoman, *& è contra. Raſt. Ent.* 108. *Aſt.* 2. *Rob. Ent.* 91. — Degree.

A Gentleman, and not an Eſquire. *Hern.* 8. *Baronettus, & non Miles & Baronettus,* &c. 1 *Vent.* 154. *Clift.* 16, 17. — Simile.

That his Sirname is wanting, and *Capellanus* is no Name of Dignity. *Et Indict. pro def. ſuper inde. Raſt. Ent.* 570. — Capellanus.

That the Land in Demand is in *C.* and not in *B.* and Iſſue thereupon. *Raſt. Ent.* 362. *Aſt.* 322. — Miſpriſion de Vill.

In Aſſize, That part of the Land lies in another Vill. *Raſt.* 79. — Simile.

Miſ-

Simile de Pariſh. Miſnaming the Pariſh in *appello mortis. Bro. Rediviv.* 2.

Adjournment.

OF adjourning a Court by a Lord High Steward. *Kelyng's Rep.* 57.

That on adjourning the Seſſions, Continuance may be from one Day certain to another, but not from one Seſſions to another. *Id.* 90.

Concerning the Adjournment of the Term, and how it ſhall be adjourned. *Vide* 1 *And.* 279. *Bro.* Proclamations. 6. *Br.* Adjournment 28. *Et vide Gen. Abr. Tit.* Adjournment.

That a Jury which doth not appear full, cannot be adjourned; for ſuch a Jury is not accounted a Jury, and ſo are not bound to attend the Court, for it would be to no Purpoſe. *Stil's Pract. Reg.* 65.

That all Adjournments of the Seſſions are in the Præter Tenſe, and ſo of Indictments. *Raym. Rep.* 115.

Admiralty.

THE Original being of the Admiral's Juriſdiction, the Conſequents ſhall be tried there alſo. 1 *Lev. Rep.* 243, 267. Or according to 2 *Sand.* 260. where the Court of Admiralty has Juriſdiction of the principal Matter, it ſhall have Juriſdiction of all the Reſidue which depends upon it.

By Stat. 2 *W. & M. Seſſ.* 2. *cap.* 2. it is declared, That all and ſingular Authorities, Juriſdictions and Powers, which by Act of Parlia-

Parliament, or otherwiſe, are inveſted in the Lord High Admiral of *England* for the Time being, have always appertained to, and ſhall be uſed and executed by the Commiſſioners of the Admiralty, as if they were Lord High Admiral.

And therein alſo is appointed the Oath that every Officer preſent, upon Trials of Offenders by Courts Marſhal, to be held by any Commiſſion granted by the Lord High Admiral, or Commiſſioners of the Admiralty, ſhall take before proceeding to any Trial.

Vide Officers *and* Soldiers.

Affidavit.

INdictment of Perjury thereupon. *Show. Rep.* 335. And what ſhall be good Evidence thereupon. *Id.* 397.

Affray.

AFFRAY ſignifieth, in our Common Law, a Skirmiſh or Fighting between two or more; alſo a Terror wrought in the Subjects by any unlawful Sight of Violence or Armour. *Vide Cow. Interp. verb.* Affray.

If Weapons be drawn, or Stroke given or offer'd, 'tis an Affray. *Hale's Pl. Cor.* 135.

But Words, no Affray; Menace to kill or beat, no Affray; but yet for Safeguard of Peace, a Conſtable may bring them before a Juſtice. *Ib.*

In Affrays, what a private Man may do, *viz.* He may ſtay Affray till Heat be over, and deliver them to a Conſtable. And if one Perſon hurt another dangerouſly, a pri-

vate

vate Perſon may arreſt the Offender, and bring him to Gaol, or the next Juſtice. *Ibid.*

That Affray is oftentimes conſounded with an Aſſault. *Cowel. Interp. ut ſupra.*

Affrays. *Vide* Riots, Routs, *&c.*

In preſence of a Conſtable.

If an Affray be in the Preſence of a Conſtable, he ought to do his Endeavour to ſuppreſs it, otherwiſe he is fineable. *H. Pl. Cor.* 135.

If the Affrayer fly.

And if an Affrayer fly to a Houſe, or if an Affray be made in a Houſe, the Conſtable may break open the Houſe to preſerve the Peace, or to take the Offender. *Ibid.* 136.

Aſſault upon the Conſtable.

And if in an Affray, an Aſſault be made upon the Conſtable, he may ſtrike again, or impriſon the Offender; alſo in ſuch caſe it is ſaid, he may impriſon him till he find Surety of the Peace. *Ib.* 136.

Affray over.

But if the Affray be paſt, and not in view of the Conſtable, it ſeems he may not impriſon without Warrant of a Juſtice, unleſs Felony be done, or like to be done. *Ib.*

In Preſence of a Juſtice.

And if an Affray be in the Preſence of a Juſtice of Peace, he has the ſame Power that a private Perſon or Conſtable hath, and may impriſon till Surety of Peace be found; and the like he may do upon a Complaint to him thereof made. *Ibid.*

Dangerous Hurt.

And if the Hurt be dangerous, he may impriſon the Offender, till it appear whether the Party may dye or live, or he may bail the Party; but the former is accounted better Diſcretion. *Ibid.* *Vide* Riot, Rout, *&c.*

PRECEDENTS.

Indictments.

Ff. For Indictments for Affrays, made in time of Aſſizes. *Weſt. Pref. of* Fines, *&c.* 77, 78, 185, 336.

Ff. For

ſſ. For an Aſſault in the High-way, with an Intention to kill or commit a Robbery. *Id.* 191. — Aſſault in High-way.

ſſ. For an Aſſault upon Suitors or Witneſſes, in the Preſence of Juſtices. *Dyer* 188. *Aſſ.* 1. — Upon Suitors, *&c.*

Vide Riots *and* Routs, *&c.*

Aiders and Abettors.

Vide Acceſſary. *Vide* Appeal.

BY 1 *W.* & *M. Seſſ.* 1. *cap.* 32. The Abettors of Perſons illegally conveying or driving of Wool, were to forfeit and ſuffer as by the Laws and Statutes then in force againſt the Exportation of Wool. — Concerning the driving of Wool.

Alſo Officers not obſerving the Direction of the ſaid Act, ſhall be adjudged Abettors of the Tranſportation, and ſuffer the Penalties contained in the Statute of the 12 and 14 of King *Charles* II. againſt *Tranſportation of Wool.* — Officers adjudged Abettors.

And by 7 *&* 8 *W.* 3. *cap.* 28. the former Act is continued. — Act continued.

But ſo much of the Act of the 13 *&* 14 *Car.* 2. *cap.* 18. as relates to the making the Exportation of Wool Felony, is thereby repealed. — Felony repealed.

And by this Statute of 7 *&* 8 *W.* 3. All Perſons who ſhall aid, abett, or aſſiſt, in carrying or exporting Wool, Woolfels, Mortlings, Shortings, Yarn made of Wool, Wool-flocks, Fullers Earth or Scouring Clay, contrary to the ſaid Act, ſhall ſuffer 3 Years Impriſonment, and pay ſeveral Penalties. — Puniſhment and Penalties.

See

See the Act; Which Act is continued by 9 & 10 *W.* 3. *cap.* 40.

Transporting Wool out of *Ireland.*

Alſo by *Stat.* 10 & 11 *W.* 3. *cap.* 10. (which was againſt the Exportation or Conveying of Wool, Drapery, Stuffs, and Woollen Manufactures out of *Ireland*, into any Foreign Parts, other than into *England* and *Wales*) there is a Penalty of 40 *l.* upon ſuch as ſhall wittingly aid or aſſiſt therein.

Penalty.

Note.

By many Statutes againſt Felony, the *Aiders*, *Abettors*, and *Counſellors*, be made Principals by the ſpecial Words of the ſaid Statutes, and not Acceſſaries to the ſame Felonies.

Aiding and Aſſiſting

WHERE theſe Words are neceſſary to be found, or not. *Kelyng. Rep.* 78, 71.

High Treaſon for Aiding and Aſſiſting, *cuidam ignoto*, *Id.* 10. *Vide ante* Abettors *and* Aiders, Acceſſary, *&c.*

Alien.

WHERE ſuch an one living here, is a Subject, tho' not a natural-born Subject. *Kelyng. Rep.* 33.

Two Brothers Aliens naturalized, their Iſſue ſhall inherit the one and the other, 1 *Lev. Rep.* 59.

Lands purchaſed by Aliens.

That an Alien may purchaſe Lands, but the Law gives him nothing; and the King, upon Office found, may ſeize it. *Rol. Abr.* 194. *Tit. Alien. Pl.* 1.

If

If the King pardons his loving and obe- ient Subjects, this extends to Aliens if here the Time, tho' made not Denizens. *per Job.* 271. — Pardon extends to Aliens.

That an Alien Merchant Friend may take Houſe for Years for his Habitation. *Id. Col. Abr. Pl.* 3. — Leaſe to him

But if he leaves the Realm, or dies, the King ſhall have it. *Ibid. Pl.* 4. *&* 5. *Co. Lit.* 2. *b.* — If he leaves the Realm.

Yet *Dubitatur*, if he purchaſes a Copyhold in Fee, in the Name of *J. S.* in Truſt for himſelf and his Heirs; whether the King ſhall have it. *Ibid. Pl.* 8. — If he purchaſe in Truſt.

That an Alien Friend may be an Adminiſtrator, and ſhall have Adminiſtration of Leaſes as well as perſonal Things. *Cro. Car.* 3. *Sir* Upwell Caroon's *Caſe. &* 1 *Vent.* 217. *Aliter* of an Alien Enemy. *Cro. Eliz.* 842. — Alien Friend Adminiſtrator.

If a Man be bound to an Alien Enemy, his is void, *quoad* the Obligee. 1 *Rol. Abr.* 195. *Let. B. Pl.* 1. So if a Man be bound to an Alien Friend, who after becomes an Enemy, it is void, *quoad* him. *Ibid. Pl.* 2. But in both Caſes ſaid, the King ſhall have it, yet made a *Quære. Pl.* 3. — Obligation to an Alien Enemy.

What Actions an Alien Friend may have. *Co. Lit.* 129. *And Rep.* 25. *Yelv.* 198. *Owen* 45. *Bul.* 134. — Actions by Alien Friend

Concerning what Act in Law will make a Man a Denizen. 1 *Rol. Abr.* 195. *Let. C.* — Denization.

It is ſaid, That in the Conqueſt of a Chriſtian Kingdom, all are Denizens. *Ibid. Pl.* 3. 7 *Co.* 6. *a.* 18. *in* Calvin's *Caſe.* — Denizens by Conqueſt.

Denization. Concerning the Proviſo (where an Alien is made a Denizen) of his being obedient to the Laws. 1 *Rol. Abr. Let. E. Pl.* 1.

Born in *Engliſh* Plantations. Thoſe that are born in the *Engliſh* Plantations are accounted Subjects. *Vaughan Rep.* 279. And further, who ſhall be ſaid an Alien and who a Subject born. *Vide* 7. *Co.* Calvin's *Caſe.*

Children of Ambaſſadors, *&c.* Concerning the Children of Ambaſſadors born abroad, and of *Engliſh* Merchants trading into other Countries, and their marrying an Alien and having Iſſue, that ſuch Iſſue are Subjects born. *Ibid. & Cro. Car.* 601, 602. *Lit. Rep.* 23, 24.

Alien born pleaded. In what Actions Alien born is a good Plea. *Bendl. c.* 58. *Pl.* 96. together with the manner of pleading it, and when to the Writ, and when to the Action. *Co. Lit.* 129, 161. 7 *Co.* 1. 9, *b.* 16, 26. *in* Calvin's *Caſe.* 1 *Syd.* 357. *Lit. Rep.* 26. 1 *Leon.* 78, 79. 1 *Saund.* 8. *Raſt. Ent.* 605. *b.*

Naturalization. Naturalization; concerning it. 1 *Rol. Abr.* 195. *Let. D. Pl.* 1. 7 *Jac. cap.* 2. 2 *Rol. Rep.* 94, 95. 29 *Car.* 2. 9 & 10 *W.* 3. *cap.* 20. *Co. Lit.* 129. 7 *Co.* 7.

That it is not limited or upon Condition. *Co. Lit.* 129. *a.* 2 *Rol. Rep.* 95. *Cro. Jac.* 53[illegible]

In *Ireland*, binds not in *England.* That the Naturalization by the Parliament in *Ireland* binds not in *England. Ibid. Pl.* [illegible] & *Vaugh. Rep.* 274, 275. But that a Naturalization in *England* makes a Man a natural born Subject in *Ireland. Vaugh.* 29[illegible] 2 *Keb.* 601. 2 *Jon.* 11, 12. 2 *Ventr.* 1, *&c.*

PLEADINGS.

IN Ejectment, That the Plaintiff is an Alien Enemy, and Iſſue thereupon. *Raſt. Ent.* 252. *Cliſt. Ent.* 4.

Iſſ. The like in caſe for Words. *Yelv.* 48.

Iſſ. The like in Treſpaſs. *& Repl. quod eſt Anglicus de Nativitate. Raſt.* 605. *Aſt.* 11.

Iſſ. In Hibernia quod quer' eſt Hibernicus, & non de ſanguine eorum qui debent gaudere lege Anglicana. Davis 38. *bis.*

Iſſ. Alien and Denizen. 9 *E.* 4. 7.

Iſſ. Iſſu ſi un ſoit Alien. Hern. 362.

See the late Act of Parliament, *Anno Annæ Reginæ*, for naturalizing foreign Proteſtants, whereby it is enacted, That all Perſons born out of the Ligeance of Her Majeſty, Her Heirs, or Succeſſors, who ſhall take and ſubſcribe the Oaths, and make, repeat and ſubſcribe the Declaration in the Manner therein mentioned, ſhall be deemed, adjudged, and taken to be Her Majeſty's Natural born Subjects to all Intents, Conſtructions, and Purpoſes, as if they and every of them had been, or were born within this Kingdom. In which Act there is alſo a Proviſo, for ſuch Perſons to receive the Sacrament of the Lord's-Supper in ſome Proteſtant or Reformed Congregation within *Great Britain*, three Months before their taking the Oaths mentioned in the Act, of which they muſt then produce a Certificate.

Stat. 7 *Annæ Reginæ* for Naturalizing Foreign Proteſtants in *Great Britain*.

That the Children of all natural born Subjects, born out of the Ligeance of Her Majeſty, Her Heirs and Succeſſors, ſhall be deemed, adjudged and taken, to be natural

Children of Subjects born out of Ligeance.

tural born Subjects of this Kingdom, to all Intents, Conſtructions, and Purpoſes whatſoever.

Naturalizing Foreign Proteſtants in *Ireland.*

That all Perſons born out of the Ligeance of Her Majeſty, Her Heirs, or Succeſſors, who ſhall qualify themſelves in the Kingdom of *Ireland*, in like manner as Perſons are by this Act required to do within the Kingdom of *Great Britain*; all and every ſuch Perſons ſhall be deemed, adjudged and taken to be Her Majeſty's natural born Subjects of the ſaid Kingdom of *Ireland*, to all Intents, Conſtructions and Purpoſes, as if they and every of them had been, or were born within the ſaid Kingdom of *Ireland.*

Alteration of Whitſuntide *and* Lammas *Terms, for the Court of* Exchequer *in* Scotland, *by an Act* Anno 7 *Annæ Reginæ.*

Whitſuntide and Midſummer Terms altered for the Court of Exchequer in *Scotland.*

ENacted, That *Whitſuntide* Term for the Court of *Exchequer* in *Scotland*, ſhall at all Times hereafter begin upon the firſt Day of *June*, and end upon the 22d Day of the ſame Month; And *Lammas* Term ſhall begin on the 7th Day of *July*, and end on the 26th Day of the ſaid Month, except any of the ſaid Days happen to be on a *Sunday*, in which Caſe the Beginning or Ending of ſuch Term ſhall be the Day following.

Ambaſſador

Ambaſſadors.

IF a foreign Ambaſſador (being *pro Rex*) committeth a Crime which is *contra ...s gentium*; as Treaſon, Felony, Adultery, *...c.* he loſes the Privilege and Dignity of ...n Ambaſſador, and may be puniſhed here ...s any other Alien, and is not to be re...anded to his Sovereign, but of Courteſie, ... *Inſt.* 153. *Molloy* 139. *&* 1. *Rol. Rep.* 175. ...ee after. When an Ambaſſador may be puniſhed.

That if a Man that is baniſhed, be ſent ...mbaſſador to that Place from which he is ...aniſhed, he cannot be detained or offended ...here. 4 *Inſt.* 153. If formerly baniſhed.

That upon Contracts which are good ...re Gentium, he muſt anſwer here. 4 *Inſt.* ...53. Yet by 3 *Bul.* 28. agreed by the *Ci...ilians*, That the Perſon of an Ambaſſador ...annot be arreſted: And by *Molloy* 141. ſaid, ...hat by the Civil Law, his Moveables can...ot be ſeized on as a Pledge, or for Pay...ent of a Debt, tho' by the Leave of the ...ing or State where he reſides. He ought to anſwer Contracts. But not to be arreſted, *&c.*

That if therefore he hath contracted a ...ebt, he is to be called upon kindly, and ... he refuſes Payment, Letters of Requeſt are ... go to his Maſter; ſo that the ſame Courſe ...ay be taken with him as with Debtors in ...nother Territory. *Vide* 3 *Bulſt.* 38. What Courſe ought to be taken.

That if a Thing be only *malum prohibitum* ... Act of Parliament, private Law, or Cu...om of the Realm, and is not *malum in ſe ...re Gentium, nec contra jus Gentium*, an Am...aſſador reſiding here ſhall not be bound by ... 4 *Inſt.* 153. *Molloy* 139. 1 *Rol. Rep.* 175. Not bound by a *malum Prohibitum.*

If he ſtirs up Rebellion.

But in the Biſhop of *Roſes* Caſe, 13 *Eliz.* upon the Queſtion, *An Legatus qui Rebellionem contra Principem ad quem legatus concitat legati privilegiis gaudeat, & non ut hoſtis pœnam ſubjaceat*; It was reſolved, he had loſt the Privilege of an Ambaſſador, and was ſubject to Puniſhment. 4 *Inſt.* 152. *Molloy* 33. *Vide* 3 *Bulſt.* 28. & 1 *Rol. Rep.* 185.

Puniſhable.

Where not as a Pirate for taking Goods at Sea.

That he is not puniſhable here as a Pirate for taking Goods at Sea from an Enemy againſt his Maſter, and bringing them hither who are in League with ſuch his Maſter's Enemy. For this, ſee *Gen. Abridg.* 32 *Pl.* 5. And that one Enemy cannot be a Felon for taking the Goods of another. *Hil.* 12 *Jac. Palache's* Caſe, 4 *Inſt.* 152, 153, 154.

No Writs to arreſt him or his Domeſticks.

By a late Act paſſed *Anno* 7 *Annæ Reginæ* it is enacted, That all Writs and Proceſs at any time ſued for, whereby any Ambaſſador, *&c.* received as ſuch by Her Majeſty or domeſtick Servant of ſuch Ambaſſador may be arreſted, *&c.* ſhall be deemed null and void.

Puniſhment of ſuch as ſhall ſue them out, *&c.*

That any Perſons ſuing forth any ſuch Writ, and all Attorneys, *&c.* and Officers executing of the ſame, being convicted by Confeſſion, or by the Oath of one Witneſs before the Lord Chancellor, the Chief Juſtices of the Queen's-Bench and Common Pleas, or any two of them, ſhall be deemed Violaters of the Laws of Nations, & and ſuffer ſuch Pains, *&c.* as the Lord Chancellor, *&c.* ſhall judge fit.

Perſons not to be protected, *&c.*

But no Merchant, or other Trader, within the Deſcription of any Statutes againſt Bankrupts, in the Service of any ſuch Ambaſſ

do

ſor, *&c.* ſhall have any Benefit by this Act; nd no Perſon ſhall be proceeded againſt, or the arreſting the Servant of any Ambaſ-ador, *&c.* unleſs the Name of ſuch Servant e firſt regiſtred in the Secretary of State's Office, and tranſmitted to the Sheriffs of *London* and *Middleſex*, who ſhall hang up the ame in ſome publick Place in their Offices, whereto all Perſons may reſort, and take Copies without Fee.

His Servants to be regiſtred, *&c.*

That this Act ſhall be allowed in all Courts of this Kingdom as a publick Act, and all Judges, *&c.* are to take notice of it, without ſpecial Pleading; and all Sheriffs, Bailiffs, *&c.* are to have Regard to this Act at their Peril.

This is a publick Act.

Note: This Act ſeems to have been occaſioned upon ſome Actions and Suits, *&c.* proſecuted againſt *Andrew Artemonowitz Matueof*, Ambaſſador Extraordinary of his *Czariſh* Majeſty; whereby 'tis enacted, That all Actions, Suits, *&c.* proſecuted againſt the ſaid Ambaſſador, and all Bail-Bonds given by him, *&c.* and all Proceedings thereupon, were null and void; and that all Entries, Proceedings, *&c.* againſt the ſaid Ambaſſador, or his Bail, ſhould be vacated and cancelled. See the Act, intituled,

An Act for preſerving the Privileges of Ambaſſadors, and other publick Miniſters of Foreign Princes and States.

Amercement.

WHERE the Townſhip ſhall be Amerced, upon the Eſcape of a Felon ſlaying a Man in the Day-time. *H. Pl. C.* 111.

And ſo if it be a dangerous Wound, and the Town be walled, tho' it be by Day or by Night. *Ibid.*

And therefore the Judges directed, That when any ſuch Caſe appeareth at *Newgate*, (as it often doth upon the Acquittal of Perſons apprehended upon Suſpicion) that both the Coroner, as alſo the Secondaries of *Newgate*, be required to attend the Judges of the *King's-Bench*, that Information may be put in that Court againſt the Townſhips for the Eſcape, and followed *pro Rege*; and at the next Seſſions of *Newgate*, give an Account what is done. *Kel. Rep. fol.* 5.

Amercement of Jurors.

For Default upon an Adjournment.

If a Juror appears, and is adjourned upon a Pain, and makes Default in this Caſe, becauſe he ſhall be fined to the Value of his Lands *per Annum*; this ſhall be inquired by the reſt of his Companions of the Jury. *Per* 8. *Co.* 41. *a. Vide Fitz. Peine* 3. *b.*

Amercement affeered by the Jurors.

Upon a Nonſuit, after a Jury are ready to give their Verdict, the Court may cauſe the Amercement to be immediately affeered by the ſame Jurors. *Per* 8 *Co.* 35.*b.* 11 *Co.*43.*b.*

By the Jury in a Leet.

If a Jury in a Leet tax an Amercement: This is ſufficient without any other Affeerment; for the Amercement is the Act of the

he Court, and the Affeerment of the Jury. *Co.* 40. *b. Cro. Car.* 275. 1 *Jon.* 301.

Yet *per Hob.* 129. it's ſaid, The Jury muſt merce to a certain Sum, which may be mi-gated and affeer'd by others, and therefore heſe Offices cannot be confounded. *Quære.*

If one of the Jury in a Leet departs with-ut giving his Verdict, he ſhall be fined by e Steward. 8 *Co.* 38. *b.* Juror fined.

If at a Court Leet, 12 chief Pledges being vorn to inquire of the Articles of the Leet, fuſe to preſent, that they ought to pay 0 *s. pro certo Letæ*; the Steward cannot im-oſe one joint Fine upon them all, but muſt ne them ſeverally; for the Refuſal of one, not the Refuſal of the other. 11 *Co.* 42. odfreys *Caſe.* 1 *Rol. Rep.* 32. 73. If the 12 at a Leet refuſe to preſent,

Fines impoſed by any Court of Record, e not to be affeered. 8 *Co.* 39. *a.* 2 *Inſt.* 27. *elw.* 65. Where no Affeerment or Fine.

Alſo, no Court, unleſs of Record, can fine d impriſon. 11 *Co.* 43. *b. Godb.* 381.

Appeals.

APpeals, in relation to the Matter, are of Two Sorts, *viz.* Capital, and not Ca-tal. Of two Sorts.

Thoſe that are Capital, are of Felonies; hich alſo are of Three Sorts, *viz.* Capital.

1. Of Death.
2. Of Larceny.
3. Of Rape.

But an Appeal of Mayhem is not Capital; d tho' it be *Felonice*, yet it is but a Treſ-paſs Not Capital, as of Mayhem.

paſs in its Nature and Judgment, and may be commenced in the *Queen's-Bench*, Gaol-Delivery, or before the Coroner or Sheriff. *Hales Pl. Coron.* 180.

Mayheming, what.

Mayheming is ſaid to be, where one Man, *&c.* ſhall take from another a natural Member of his Body, or the Uſe and Benefit thereof, as the Eye, the Hand, a Finger, the Foot, the Scalp of the Head, the Fore-Teeth, *&c.* and thereby diſable him to ſerve his Country by his Weapons in the Time of War, or by his Labour in the Time of Peace, and alſo diminiſheth the Strength of his Body, and weakens him thereby to get his own Living, *&c. Vide* Cowel's *Interp. Verb. Mahem. &* Pulton *de Pac.* 15. *b. &c.*

Gelding of a Man is alſo a Mayhem; ſo to cut off the Cheek or Jaw-Bone of any Perſon, or to cruſh or break any of them, is ſaid to be a Mayhem.

A malicious Mayhem made Felony. 22 & 23 *Car.* 2. *cap.* 1.

But if any Perſon or Perſons, of Malice forethought, do cut out, or diſable the Tongue, put out an Eye, ſlit the Noſe, cut off the Noſe or Lip, or cut off or diſable any Limb or Member of any Subject of His Majeſty, with Intention in ſo doing to maim or diſfigure ſuch Subject; ſuch Perſon or Perſons, their Counſellors, Aiders and Abettors, ſhall ſuffer as in Caſe of Felony without Benefit of Clergy. 22 & 23 *Car.* 2. *cap.* 1.

Abettors.

Mayhem in Effect, but Treſpaſs.

Mayhem in Effect, is but an Action of Treſpaſs, wherein the Plaintiff ſhall recover Dammages according to the Quality and Quantity of the Offence, and the Defendant ſhall be impriſoned; yet it is ſuppoſed

be done felonioufly, *Felonice ut felo Domini Regis.* Pulton, *ut ſupra.*

The Court may examine the Mayhem at the Requeſt of the Defendant, if they think fit; and if the Plaintiff do bring ſuch an Appeal, and it appear he is not mayhem'd, he ſhall pay a Fine. *Ibid.* Mayhem examined.

In ſuch an Appeal, the Plaintiff may chooſe to make all Principals; or elſe to make him Principal who firſt did ſtrike him, and the reſt Acceſſary. *Ibid.* All be made Principals.

The Defendant may juſtify in his own Defence, or he may plead the Releaſe of the Plaintiff. Juſtification.

Alſo it is ſaid, That if one of the Defendants doth appear and confeſs the Mayhem, and is committed to Priſon, the Plaintiff cannot ſue the others, unleſs he will ſuffer him that hath confeſſed to go at Liberty; for his Impriſonment ſhall be an Execution for the whole Mayhem. *Vide Pult. de Pac.* 16, 17. Alſo, he cannot have both Mayhem and Treſpaſs. *Ibid. Et vide* 4 *Co.* 43. Defendant confeſſes the Mayhem.

Appeals of Murther, &c.

Firſt, As to Appeal of Death, for Murther or Manſlaughter; it is to be brought either by the Wife or the Heir Male; but if the Dead hath a Wife, the Heir ſhall not have the Appeal. *Vide poſtea.* Appeal of Murther, *&c.* By whom.

That Woman who may have an Appeal of the Death of her Husband, ſhe muſt be a Wife *de jure*, and not *de facto* only, for *ne unques accouple, &c.* is a good Plea. 2 *Inſt.* 68. *Stamf.* 59. *Hale Pl. C.* 181. By Wife *de Jure.*

And

Elopement.

And it ſeems, that tho' ſhe eloped in his Life time, ſhe may have an Appeal. *Co. Lit.* 33. *a.*

Muſt continue his Widow.

She muſt continue *Femina Viri ſui*, (that is, his Widow) for if ſhe marries before, or pending the Appeal, 'tis gone for ever, tho' the ſecond Husband die within the Year. 2 *Inſt.* 68, 69. *Dier* 88. *Pl.* 108. *Stamf.* 59.

If ſhe marries after Judgment.

And if ſhe marries after Judgment, ſhe can have no Execution; for the Want of her Husband is the Cauſe of the Appeal; but when ſhe is married again, that Cauſe ceaſeth. 2 *Inſt.* 69. *Stamf.* 59, &c.

Tho' her Husband is attainted of Treaſon, *&c.*

And if the Husband is attainted of Treaſon, *&c.* and after kill'd, it's ſaid his Wife may have an Appeal. *Co. Lit.* 33. *b.* for, notwithſtanding the Attainder, he was *Vir ſuus*; but the Heir cannot, for the Blood is corrupted. 2 *Inſt.* 69.

Not by Husband for the Wife.

But yet the Husband ſhall not have an Appeal for the Death of his Wife, but the Heir only. *Stamf.* 59. *a.*

By Heir-Male.

The Heir-Male, tho' he derives his Blood thro' Females, may have an Appeal. 2 *Inſt.* 68. *Co. Lit.* 25.

Of the Death of an Anceſtor.

By the Common Law, none but the Heir-Male may have an Appeal of the Death of an Anceſtor. And tho' an Heir-Female can have an Appeal herſelf, yet ſhe may prevent the Heir-Male from having any: As if a Man has Iſſue a Daughter only, and is kill'd, his Brother ſhall have no Appeal. *Stamf.* 59. *Br.* Appeal 68. *Raſt. Ent.* 50.

Hermaphrodite.

Yet it is ſaid, an Hermaphrodite, if the Male Sex is predominant, may have an Appeal as Heir; but otherwiſe if the Female Sex be predominant. 2 *Inſt.* 69.

If

If a Man is killed, and after his Wife dies within the Year, his Heir ſhall have no Appeal; for the Action being once attached out of the Blood, none of the Blood ſhall after have it. *Kelw.* 120. *Stamf.* 59. *b. Hale Pl. C.* 181. Heir prevented by the Wife's Death.

But if the Wife kills the Husband, it's ſaid the Heir ſhall have an Appeal. 1 *Jones* 425. *inter Piggot & Piggot. Hale Pl. Cor.* 181. *Sed vide* 1 *Leon.* 326. *& Dier.* 50. *Pl.* 4. Where the Wife kills the Husband.

Where the Heir is diſabled by Attainder, ſo where the Appeal is againſt the Heir; in ſuch Caſes, it's ſaid, the Appeal ſhall go to the next Heir, as if the other was dead without Iſſue. *Hale Pl. Cor.* 182. *Sed vide Stamf.* 60. *a. & Q.* Where the firſt Heir is diſabled. The next ſhall.

If after the Death of the Anceſtor, the Heir die within the Year, before or after the Appeal commenced, another Heir ſhall not have one. *H. Pl. Cor.* 182. *Sed per Dier* 69. *Pl.* 31. *& Stamf.* 59, 80. *dubitatur*, and *per Br.* Appeal 156. where the Heir ſo dies before Appeal, it ſeems otherwiſe. *Sed Q. & vide Bro.* Appeal 30, 75, 88, 144. *Aliter* if he die within the Year.

But it ſeems, if the Heir after Judgment die, his Heir may have Execution. *H. Pl. Cor.* 182. *Sed per Stamf.* 59. *dubitatur.* For that he that demands Vengeance for the Death of his Anceſtor, ought to make himſelf immediate Heir to the ſame Anceſtor who is kill'd, otherwiſe his Suit ſhall not be received. *Vide Br.* Appeal 141, 144. If the Heir die after Judgment.

That a Man of 70, or an Infant, may have an Appeal, and yet Battail ſhall not be waged, but the Appeal ſhall proceed, and he may have a lawful Trial, *viz.* by Inqueſt; Battail not to be waged by Appellee.

queſt; and that of late it hath been adjudged, the Parol ſhall not demur. *Sed Q. Hale Pl. Cor.* 183. *&* 2 *Inſt.* 320. *Kelw.* 120. *Br.* Appeal 116, 119.

Appeal by an Infant.

Vide Raym. 483. That before 21 *Ed.* 3. no Precedent is to be found of any Appeal brought by an Infant; but that now 'tis frequent. Which *vide Fitz. Coron.* 114. *Stamf.* 60. *a.*

Not by Ideot, *&c.*

But an Ideot, Monk, or Man mute, ſhall have no Appeal, neither of Death nor otherwiſe. *Hale Pl. Cor.* 183. *Stamf.* 60.

Within what Time.

And it is noted, That an Appeal of Death muſt be within a Year and a Day, by *Stat.* 3 *E.* 6. *c.* 24. to be accounted from the Death, not the Stroke. 2 *Inſt.* 420. 3 *Inſt.* 53. 4 *Co.* 43.

But if, *&c.*

But if, half a Year after the Murder, one becomes Acceſſary, he may be appealed within a Day and a Year after that.

Striken in one County, Death in another.

And when the Party is ſtriken in one County and dies in another, or Acceſſary in one County to Death in another, the Appeal ought to be brought where the Party died. *Hale Pl. Cor.* 183. But ſee after, *&* *vide* 3 *Mod. Rep.* 121.

6 *Ed.* 1. *cap.* 9.

Per 6 *Ed.* 1. *cap.* 9. it is enacted, That no Appeal ſhall be abated ſo ſoon as heretofore; but if he appeal or declare the Deed, the Year, the Day, the Hour, the Time of the King, and Town where the Deed was done, and with what Weapon, the Appeal ſhall ſtand, and ſhall not be abated for Default of freſh Suit, if the Party ſhall ſue within the Year and Day after the Deed done.

7 Requiſits in the Count.

Act extends only to Death.

That this Clauſe, if taken literally, extends to all Appeals; but by reaſon of the preceding Clauſes which concern the Death of a Man only, and of the Words (*with what Weapon*)

eapon) it appears to be intended of an ppeal of Death only. 2 *Inſt.* 317. *Stamf.*

As to the Deed, the Manner thereof, with e Circumſtances to aſcertain it, as much as e Nature thereof will admit: As if by ounding, in what Part of the Body, of hat Depth and Length, that it may appear ortal. To ſay *circiter Pectus*, is not good. *Mod. Rep.* 292. 1. As to the Deed. By Wounding.

So if without Wounding, whether by eapon as Blow, *&c.* or without, as poyning, *&c.* 2 *Inſt.* 318. *Stamf.* 79. Without Wounding.

If done in the Night, it muſt be laid *in cte diei* in which done. 2 *Inſt.* 318. But beuſe it may be difficult to alledge the Hour xactly, it may be laid *Circa horam decimam nte meridiem, &c.* Or, *Inter horam decimam undecimam, &c.* 4 Mod. Rep. 159. *In nocte diei.* *Circa horam* 10.

But the Day or Year cannot be alledged ith a *Circa, &c.* and yet the Plantiff is not ound to prove the preciſe Day or Hour id in his Count. 2 *Inſt.* 318. *Stamf.* 80 *Bulſ.* 77, 81, 82, *&c.* *Aliter* of the Day, or Year.

It is noted, That at the Common Law, eed not ſet forth the Hour; and therefore *Quære* if it is not good without at this Day, otwithſtanding this Statute. *Stamf.* 80. *b.* *Bul.* 83, 83. 2. Of the Hour.

As to the Time of the King, that is, the ear of his Reign, which is added again, hat not only the Year may be alledged herein the Blow, *&c.* was given, but alſo he Year when the Death enſued, that it may ppear he died of the Blow within the Year nd Day. *Anno regni Regis.*

And

The Effect thereof.

And when the Year of the King ought t be alledged, it draws with it Time and Plac *viz.* the Day and Time when and where th Death enſued. 2 *Inſt.* 319.

As to the Town or Place.

As to the Town; if done in a Town, muſt be declared; if not, but in a Plac known, it may be alledged in that Plac *in Com. &c.* 2 *Inſt.* 319. If in a City, it ma

Pariſh.

be alledged in ſuch a Pariſh, *&c.* which in lieu of a Town. *Ibid.* & *Fitz. Coron.* 80.

Not in a Pariſh.

But where a Pariſh contains ſeveral Town it cannot be alledged in a Pariſh; for th Statute requires the Fact to be alledged i a Town. 2 *Inſt.* 319.

As to the Weapon.

As to the Weapon, that alſo muſt be de clared, where any uſed. *Ibid.* But if none, ye an Appeal lies; and yet if done with an other, the Defendant muſt be found guilty

Where no Weapon.

Ibid. But not if poiſoned or drowned, when no Weapon is uſed. *Id.* 2 *Inſt.* 319.

Trial where the Wound was given.

The Wound was given in one County and the Death enſued in another; and th Party was tried where the Wound was gi ven, and held good. 3 *Mod. Rep.* 121.

In the Office of Civil Pleas.

That an Appeal of a Woman for th Death of her Husband is proſecuted in th Office of Civil Pleas in the *King's Bench*, an not in the *Crown-Office*, and the Woman ma

By Attorney.

proſecute by Attorney made by Warran under Hand and Seal, acknowledged b the Party in Court, or proved by Wit neſſes. 2 *Jones* 210. *Warren* & *Verdon.*

For a Woman ſlain.

Vide 3 *Mod. Rep.* 157. Where if a Woma be ſlain, her next of Kin ſhall maintain a Appeal.

Appe

Appeal of Robbery, Burglary, *or* Larceny.

By a surviving Merchant.

IN some Cases a Man may have an Appeal, tho' the Robbery was not done to him; but to another: As if one Joint Merchant is robbed and kill'd, the Survivor may have Appeal. *Stamf.* 61. *Hale Pl. Cor.* Same Point where both robb'd. *Fitz. Coron.* 392.

Not by Executors.

But if the Testator is robb'd, his Executors shall not have an Appeal. *Stamf.* 60. *Hale Pl. Cor.* 184.

Where neither Possession nor Property is ousted.

If *A* robs *B.* of Goods, and after *C.* robs *A.* of the same Goods, *B.* may have an Appeal of *Larceny* against *C.* because by the first taking, neither the Possession nor Property was out of *B*; for a Felon claims no Property in the Goods stole. *Stamf.* 61. *Br.* Appeal 100. *Fitz. Coron.* 39. *Hale Pl. Cor.* 184. And by *Kelw.* 160. *b.* he may have it against *A.* or *C.*

Aliter in Trespass.

But 'tis otherwise when Goods are taken by a Trespasser. *Stamf.* 61. *a. Br.* Appeal 100. *Fitz. Coron.* 39.

Where the Party is chargeable over.

If *A.* commands *B.* to bring Goods to him, and in so doing *B.* is robb'd of them; *B.* may have an Appeal, because he is chargeable over. *Stamf.* 60. *b.* So a Bailee of Goods or *Bailor* may. *Kelw.* 70. For the Bailee hath Possession, but the Butler in a House that takes Charge of Plate hath no Possession, and therefore if stole shall have no Appeal. 3 *Inst.* 108.

Aliter of a Butler.

By Master or Servant.

If the Servant is robb'd of the Master's Goods, the Master or Servant may have an

Appeal. *Hale Pl. Cor.* 184. *b. Stamf.* 60. *B*
Appeal 92. *Lat.* 127. And he that begin
firſt ſhall recover, and prevent the other i
his Action.

By Woman or Infant.

That a Woman or Infant may have a
Appeal of Robbery. 2 *Inſt.* 68. *Stamf.* 60 *b*
Hale Pl. Cor. 184.

Et è contra.

So this, or any other Appeal, lies againſ
an Infant; alſo againſt a *Feme Covert*, with
out naming her Husband. *Stamf.* 62. *a. Ha*
Pl. Cor. 185.

Confirmation of the Property.

The Appeal confirms the Continuance o
the Property: So that if *A.* robs *B.* in th
County of *S.* and goes with the Goods int
the County of *D.* an Appeal of *Larceny* lie
in the County of *D.* but not of Robbery
for that is upon a taking from the Perſon
Hale Pl. Cor. 184.

At what Time it may be.

This Appeal may be proſecuted in a Yea
Two or Three, if there was freſh Suit; tha
is, a ſpeedy and continual Purſuit of the Fe
lon for his Apprehenſion and Conviction
2 *Inſt.* 319. Which ſhall be adjudged by th
Juſtices, before whom, *&c. Stamf.* 62. *b. Ha*

Freſh Suit.

Pl. C. 185. *Kelings Rep.* 96, *&* 97. What ſha
be accounted freſh Suit, *&c.*

Several Robberies in one Appeal.

That if a Man be robbed at ſeveral Time
he muſt put all into one Appeal, and wha
is omitted is confiſcate. *H. P. C.* 184. *Vi*
Stamf. 65. *a. Br.* Appeal. 28, 32.

Several Appeals.

But if *A.* in one County procures *B.* t
rob in another, ſeveral Appeals lie in the ſe
veral Counties againſt Principal and Acce
ſaries. *Stamf.* 65. *Hale Pl. C.* 188. 7 *Co.* 2.

Appe

Appeal of Rape.

THAT the Party raviſhed ſhall have the Appeal; but if ſhe aſſents thereto, either before or after, ſhe ſhall have no Appeal. *Stamf.* 61. *a.* 2 *Inſt.* 180, 433. *Hale Pl. C.* 186. By the Party raviſhed.

That *Feme Covert* may, *&c.* without her Husband. *Br.* Rape 1. Without her Husband.

As to the Party raviſh'd conſenting, by the *Stat.* of *Weſtm.* 2. *ca.* 34. Where ſhe conſents not before or after, the Offender ſhall have Judgment of Life and Member; and where ſhe conſents after, he ſhall be attainted at the Suit of the King, and have the ſame Judgment, *&c.* And 2 *Inſt.* 433. it is ſaid, there is no Law but this that gives a Woman an Appeal of Rape. Yet *vide* 2 *Inſt.* 180. by which it appears, an Appeal of Rape lay before this Act. If Party conſents not. But if, *&c.* then by the King.

But *per* 6 *Rich.* 2. *cap.* 6. If ſhe aſſents after, her Husband may have an Appeal; if no Husband, her Father; and if no Father, the next of Blood. *Vide Fitz. Coron.* 1. *Br.* Rape 4. *Stamf.* 61. By Husband, *&c.* if ſhe aſſents after.

As to her Husband, it muſt be intended of her rightful Husband, for *ne unque accouple*, *&c.* is a good Plea. *Stamf.* 61, *b. Br.* Appeal 32. doubted, and *Quære* if ſhe marries again. *Stamf.* 61. *b.* By right Husband.

By the expreſs Words of this Statute, an Appeal of Rape is given to the Father, and yet he can have no Appeal of the Death of his Son or Daughter. *Stamf.* 61. *b.* By her Father.

If next of Kin be the Raviſher.

But if raviſhed by her next of Kin, and ſhe conſents to him, and hath neither Husband nor Father, the next of Kin next to him ſhall have the Appeal, for he hath diſabled himſelf by the Rape, by which he became a Felon, 2 *Inſt.* 434.

Raviſhed in another County.

If ſhe be taken in one County, and raviſhed in another, the Appeal ſhall be brought in that County only. *Stamf.* 63. *b. Br.* Appeal 83. *Hale Pl. C.* 186.

At what time it may be brought.

Though by *Weſt.* 1. *cap* 13. (by which, Rape was made a Treſpaſs) an Appeal of Rape ought to have been brought within 40 Days; yet being made Felony again *per Weſtm.* 2. *cap.* 34. and no Time limited for it, it may be brought in any reaſonable Time. *Stamf.* 63. *a. Hale Pl. C.* 186.

Where in an Appeal of Rape, the Statute 6 *R.* 2. muſt be rehearſed. *Vide Pulton de Pace Regis & Regni.* 160.

Proceedings therein.

Appeals in reſpect of the manner of Proceedings, are of two Kinds; As

1. By Writ.
2. By Bill.

By Bill in County Courts, *&c.*

Thoſe by Bill may be commenced, at the County Court before the Sheriff and Coroners. *Stamf.* 64. *b.* 2 *Inſt.* 410. *Hale P.C.* 179. *Br.* Appeal 56, 62. But it ſeems they can only take and enter the Appeal and Count, and proceed no further. 2 *Inſt.* 32. Yet *vide Stamf.* 64. *Bro.* Appeal 56, 62. *Fitz. Coron.* 184.

Certiorari.

By a *Certiorari* directed to the Sheriff and Coroners, may be removed in *B. R. Stamf.* 64. 2 *Inſt.* 176. *Hale Pl. C.* 179.

So

So an Appeal by Bill, may be received in . *R.* againſt one that is in *cuſtodia Mareſ-alli*; for the Judges of this Court are the overeign Coroners of *England*. *Stamf.* 64. *ale Pl. C.* 179. 2 *Inſt.* 420. So if the Party be ailed, but not if mainprized. And for the ifference between Bail and Mainprize, *Vide Inſt.* 179, 180. *Godb.* 339.

In B. R.

Sovereign Coroners.

So an Appeal by Bill, may be before Ju-ices of Gaol Delivery, where the Appel-es, or any of them, are in that Gaol. *Stamf.* 4. 2 *Inſt.* 470. who, by their Commiſſion an Appeal of Robbery, have Power. *Dier* 99. . 62. So in an Appeal of Rape. *Dier* 201. . 67. And in an Appeal of Murder, by e expreſs Words of *Henry* 7. *cap.* 1. So be-re Juſtices of *Oyer* and *Terminer*, as appears *Weſtm.* 2 *cap.* 29. which *vide* 2 *Inſt.* 420. nd there ſaid alſo, it lies before Juſtices of *iſi prius. Br.* Appeal 113. *Kelw.* 152. *b.* Be-re Juſtices in *Eyre.*

Before Juſtices of Gaol Delivery.

Robbery.

Rape.

Murder.

Oyer and *Terminer.*

Niſi prius.

But if ſuch Appeal is againſt ſeveral, of hich ſome are not in Priſon before them, ought be removed into *B. R.* by *Certiorari*, d Proceſs there made ought againſt ſuch are at large. *Stamf.* 64. *Hale Pl. C.* 179. *Co.* 47.

When it ought to be removed into B. R.

If the Felony be done out of the Realm, ought to be tried and determined be-re the Conſtable and Marſhal of *England.* 3 *Rich.* 2. *cap.* 2. 3 *Inſt.* 48. But not by Ju-, but by Teſtimony of Witneſſes or Combat. . *Lit.* 74. *a.* but 74. *b.* Where the Queen *noluit inſtituere Conſtabularium dormivit Appellum.*

Before the Conſtable and Marſhal.

It is ſaid, That if *A.* do ſtrike *B.* upon the a, and there give him a mortal Wound, hereof *B*, dieth in the County of *L*; in this

A Man ſtriken upon the Sea, dieth upon the Land, Part diſcharged

Caſe, *A.* ſhall be diſcharged of the Death of *B*: For that they of the County of *L.* cannot enquire of the Death, without Enquiry of the Wound; and of the Wound they cannot enquire, becauſe it was given upon the Sea, and not in any County or Place in this Realm: And that they of the Admiral's Juriſdiction cannot enquire as of a Felony of the Wound, without enquiring of the Death; and of the Death they cannot enquire, becauſe it was within the Body of a County, where, by the Statute of 13 *Rich.* 2. *cap.* 5. & 15 *Rich.* 2. *cap.* 3. they are forbidden to meddle. 2 *Co.* 93. *Vide* 1 *Co. Inſt.* 260. 4 *Co. Inſt.* 135. 2 *Bulſt.* 323. 3 *Bul.* 205. 13 *Co.* 42, 52. *Cro. Car.* 296, &c.

Appeal by Original Writ.

By Original Writ.

It is generally ſaid, all Principals and Acceſſaries, both before and after, ought to be joined in one Appeal. 4 *Co.* 74.

Principals and Acceſſaries charg'd alike.

In an Appeal by Original, both Principals and Acceſſaries are generally charged alike, without Diſtinction who are Principals and who Acceſſaries, until the Plaintiff counts: (But 'tis otherwiſe in an Appeal by Bill.)

Default.

And if the Defendants make Default, the Appellant, before the Exigent, ought to declare,

Declaration.

that it may be known who are Principals,

Exigent.

and who are Acceſſaries, that the Exigent may go againſt the Principals only, and the Plea, as to the Acceſſaries, be continued till the Principals be attainted; for if the Plaintiff prays an Exigent againſt all, he is concluded to charge any of them after, as Acceſſaries.

Not againſt all.

aries. 2 *Inſt.* 183. *Stamf.* 70, 148. *Br.* Appeal 7, 79. *Weſt.* 1. *cap.* 14.

If *A.* in one County, procures *B.* to rob or kill *C* in another, ſeveral Appeals lie in the ſeveral Counties againſt Principal and Acceſſaries. *Stamf.* 65. *Hale Pl. C.* 188. *Dier* 40. *Pl.* 71. 7 *Co.* 2. *b.* Several Appeals.

So for the Receipt of a Felon after the Year and Day. *Stamf.* 65. 4 *Co.* 48. Receipt of Felon.

If the Writ be abated, the Defendant cannot be arraigned upon the Count, becauſe the Count is founded on the Writ, and where the Writ abates, the Declaration depending thereupon is determined alſo, and ſaid, That the Court hath no Authority to do it. *Br.* Appeal 44, 53. *Stil. Rep.* 7. *inter* Moor & Savage. Abatement of Writ. Declaration determin'd.

But the Party may be arraigned at the Suit of the King upon the Declaration, where the Appeal being good, fails by Act of God, Party or Law; and therefore, if the Plaintiff releaſe, yet as to the King, the Defendant is not excuſed without his Pardon, for he may be arraigned for the King upon the Declaration. *Br.* Appeal 27. *Stamf.* 147, 148. Arraignment at the King's Suit.

The Writ may abate for Inſufficiency thereof, as wanting *rapuit*, falſe *Latin*, &c. *rapuit* is *vox artis*, and muſt be uſed. *Stamf* 82. 4 *Co.* 39. *b.* 2 *Rol. Rep.* 464. *Vide* 4 *Mod. Rep.* 150. That Surpluſage of falſe *Latin*, ſhall not make an Appeal of Murder void. Inſufficiency. Falſe *Latin.*

Alſo for Multiplicity of Action; ſo a ſecond Writ of Appeal purchaſed, pending a former Writ, abates; but if pending a former in the County, abates not. *Hale Pl. Cor.* 189. Multiplicity of Action.

Abatement of 2d. Writ.

But if the first Appeal by Bill be removed into the Bench by *Certiorari*, and the Plaintiff had appeared thereupon and counted, it abates the second Writ. *Ibid.*

Nul tiel Persona, *&c.*

So *Null tiel in rerum natura*, as one of the Defendants abates against all, *&c.* Ibid.

Whether he ought to plead over.

Note: The Appellee pleaded in Abatement, but did not plead over to the Felony, and said to be a Question, Whether he ought to plead over or not? 3 *Mod. Rep.* 267, 268. For the Precedents are both Ways; also said, he ought to have pleaded in Person, and not by Attorney.

Where the Plaintiff appeared by Attorney.

Vide 4 *Mod. Rep.* 100. where in an Appeal of Murder, the Appellant appeared by Attorney, and there said, the Defendant upon the Arraignment should have prayed, That the Plaintiff might be demanded, because he could not appear by Attorney; and then if he had not appeared in Person, he should be nonsuited: That the Appeal ought to be *in propria Persona sua instanter appellat.* Id. 99. The Motion was to have him discharged, because of his Appearance *per Attornatum*, alledging there was a Discontinuance, but the Motion was not granted. *Ibid.*

He ought to appeal in *propr. Persona.*

Attorney admitted *per Cur.*

Vide Stiles *Pract. Reg.* last pub. 85. That in an Appeal, the Appellant ought to appear in Court in Person, yet upon a Motion to the Court, the Court may admit him to prosecute his Suit by Attorney.

Where the Plaintiff must declare, tho' writ not executed.

Vide 1 Bulst. 71, 73, 74, 77. 3 Bul. 243. If at the Day of the Return of a Writ of Appeal, *Vic. non misit breve*; yet if the Defendant appears in Court, and prays the Plaintiff may proceed against him, he must declare,

clare, tho' his Writ is not yet executed or urn'd. *Vide Raſt. Ent.* 46. *b.*

ſ. For Abatement in Appeal, as to the Abatement.
ll. *Raſt. Ent.* 47.
ſ. As to the Sirname, and Iſſue thereon.
54.
ſ. Null tiel Perſona in rerum natura. Raſt.
. Dier 348.
ſ. For Inſufficiency of the Writ. *Et Ju-*
quod breve caſſetur. Co. Ent. 56. Raſt.
. 47.
ide Pulton *de Pace Regis & Regni* 160. *b.*

If the Plantiff be Nonſuit before Decla- Nonſuit *ante*
ion, there is nothing upon which he can *Narr.*
arraigned. *Br.* Appeal 67. *Sed Vide Cro.*
iz. 160.
Neither may he be arraigned at the Suit If not well
the King, where by the Plea, or otherwiſe, intitled.
appears the Plaintiff was not well intitled
the Appeal. *Stamf.* 148, 149, *&c.*
If upon a Trial before Judges of *Niſi prius,* At *Niſi prius.*
Defendant is nonſuit, it's ſaid, they may
arraign the Defendant upon the Decla-
ion; but 'tis otherways when an Appeal
begun before them. *Br.* Appeal 115.
That the Appeal carries the greater Pre- Arraign'd
nption againſt the Defendant, and there- upon Decla-
e if there be an Indictment and an Ap- ration *ad*
al for the ſame Offence, and the Plaintiff *gis.*
er Declaration is nonſuit, the Defendant
ll be arraigned at the Suit of the King
on the Declaration, and not upon the
dictment. *Stamf.* 147. *B.* 148. *a. Br.* Ap-
l 92.

The

How he may declare.

The Plaintiff may declare the Fact, according to the Conſtruction the Law makes of it; as if *A. B.* and *C.* are preſent, and *C.* only ſtrikes, *&c.* he may count that they all ſtruck. *Stamf.* 80. *b. Hale Pl. Cor.* 187.

Againſt all.

So in an Appeal of Rape, where *A.* and *B.* were preſent, abetting *C.* to raviſh, *&c. Ibid.*

By Couſin and Heir.

In an Appeal of Death, by one as Couſin and Heir, he ought to ſhew how. *Stamf.* 81. *Hale Pl. C.* 187. *Br.* Appeal 12. 1 *Bulſt.* 71, 75. *Fitz. Cor.* 28, 114, 201.

Pro morte ignoti.

That an Indictment may be brought *pro morte ignoti*; otherwiſe of an Appeal. *Br.* Appeal 61.

Implication of Conſent, *&c.* in Rape.

That Defendant raviſhed his Wife *contra formam Statuti* (6 Rich. 2. *cap.* 6.) implies her Conſent. *Stamf.* 81. *Felonice rapuit*, imply *carnaliter cognovit.* Ibid. And that in the Word *rapuit*, *Felonice* is imply'd. *Stamf.* 82. *a. Dier* 202. The Word *rapuit is vox artis*, and muſt be uſed. *Stamf.* 82. 4 *Co.* 39. *b. Co. Lit.* 124. *a.* 2 *Rol. Rep.* 464.

Sureſt Concluſion.

In an Appeal of Murder, That the Wound was given the 23d of *Sept.* and he died the 24th. Or that the Wound was given at *A.* of which he after died at *B*; the ſureſt Concluſion is, *Et ſic murdravit modo & forma ſupradict.* 2 Inſt. 318. 4 Co. 42. Cro. Eliz. 196.

In Appeal of Murder.

Jury.

Where an Appeal was againſt 3 for a Murder, the Count was, that *O.* gave the Wound, of which the Perſon died; the Jury found that *L.* gave the Wound, and that *O.* and *M.* were aſſiſting: This varies from the Count, and yet held good. 3 *Mod. Rep.* 121.

Vary from the Count.

How

How many Things are required by the tute of *Glouceſter*, to be alledged in an Ap- al of Murder. *Id.* 158. *Vide ante* in an Ap- al of Murder and Manſlaughter. — Requiſits.

If an Appeal is brought againſt ſeveral, and but one make Default, yet the Plain- ought to count againſt all. 4 *Co.* 47. *b.* ait's *Caſe*. *Hale Pl. Cor.* 188. *Stamf.* 81. Appeal 28. — Default by all but one.

That in an Appeal of Robbery, the Plain- in his Count muſt declare of all Things which he was robb'd, or elſe they ſhall be feited to the King; for the Favour which Law preſumes the Plaintiff bears the Fe- n, and he can have Reſtitution for no more an in his Appeal. 3 *Inſt.* 227. But with hat Certainty as to Number, Colour, oods, *&c. Vide Stamf.* 81. — Count in Robbery. — Reſtitution.

Concerning Reſtitution of ſtolen Goods on Appeals, *&c. Vide* Pulton *de Pace Re- & Regni.* 227, *b.* 228.

No Imparlance in Appeal, but Adjourn- ent *per dies dat.* 1 *Syd.* 325. 2 *Keb.* 183. *vide Lat.* 173. where a Day or two was nied to be given to a Guardian at the ay whereupon he was called, and came not; *quod, &c.* — No Imparlance.

It is ſaid, the Defendant may plead any ing in Bar, by which it appears, the Plain- is not intitled to the Appeal. *Stamf.* , 148. *Hale Pl. C.* 190. But in ſuch Caſe, o' the King takes no Advantage of the ppeal, yet the Defendant muſt anſwer to Indictment; for tho' he is diſcharged of e Appeal, yet he is not diſcharged of the lony. *Stamf.* 149. — What may be pleaded in Bar. — Where he muſt anſwer to an Indict- ment.

A Nonſuit

A Nonſuit, or *Retraxit.*

A Nonſuit in a former Appeal after a Declaration; ſo of a *Retraxit. Hale Pl. C.* 190. *Stamf.* 98. *b.* So where the Plantiff is nonſuit and the Defendant arraigned upon the Declaration at the Suit of the King. *Fitz. Coron.* 3.

A Releaſe, but, *&c.*

That the Plaintiff hath releaſed to the Defendant. But if an Appeal be againſt divers, a Releaſe or *Retraxit* as to one, is no Bar for the other. *Stamf.* 98. *Hale Pl. C.* 190. *Fitz. Coron.* 98. For the Defence, Pleas, and Bars in Appeal, *Vide* Pulton *de Pace Regis &c.* 160, 161.

When he may plead over.

If the Defendant plead in Bar, *in favorem vitæ*, he may alſo plead over to the Felony, and it ſhall not be double; not ſo if in Abatement, if not where Life is in Danger. *Stamf.* 98. *Hale Pl. C.* 190. *Cro. Eliz.* 495. *Moor* 457. *Pl.* 628. Pulton *de Pac.* 161. *b.*

When not.

But in Caſe of a Releaſe pleaded, he ſhall not plead over to the Felony, not Guilty; for that would be repugnant to his Plea before confeſſing the Felony by Implication. *Stamf.* 98. *Hale Pl. C.* 190, 191. Pulton *de Pac. ut ſupra.*

Where after a Bar, Defendant may plead not Guilty.

If the Defendant pleads in Bar, without concluding to the Felony, where he might alſo have pleaded to the Felony; yet if his Bar is found againſt him, he may after plead not Guilty to the Felony. *Stamf.* 98. *Hale Pl. C.* 191. *Br.* Appeal 115.

Simile.

So if the Defendant pleads, *Ne unque accouple* in loyal Matrimony, and it is certified they were *accouple, &c.* yet he may after plead not Guilty: *Fitz. Coron.* 140. *Br.* Appeal 17, 101.

In

In an Appeal of Death, the Defendant cannot justify *se defendendo*, but must plead not Guilty, and the Jury find the special Matter, 2 *Inst.* 316. 1 *Bulst.* 141. *Br.* Appeal 122. — Where he must plead not Guilty.

But a Sheriff, *&c.* that executes a condemned Man, may justify, and need not plead not Guilty. *Br.* Appeal 5. But a Judge that condemns a Man, *&c.* cannot justifie, but must plead not Guilty, and shew his Matter in Evidence. *Br:* Appeal 5. *Vide Gen. Abr.* 498. *Pl.* 1 *in Marg.* — Justification by a Sheriff. — But not by a Judge.

Yet in an Appeal of Mayhem, the Defendant must justifie *se defendendo*, and cannot give it in Evidence. 2 *Inst.* 3 & 6. — Where he must justify.

In an Appeal of Manslaughter, the Defendant *defendit Feloniam & Murdrum*, and then pleads a Conviction upon an Indictment, and Clergy allowed, and in Conclusion of the Plea, *quoad* the Felony and Murder, pleads not Guilty; and this was held a good Plea, per Bradly & Banks. *Cro. Jac.* 283. *Yelv:* 204, 205. 1 *Bulst.* 141, 142. — Bar by Conviction and Clergy, and then pleads not Guilty.

For the Pleas *Auterfoits*, *Convict* or *Acquit*, &c. *Vide Tit.* Com.

Note: It's said, no Appeal could at Common Law avoid either a Conviction or an Acquittal. *Kelings Rep.* 91, 92. — At Common Law.

That Indictments have Preference to Appeals; and therefore an Appeal depending, not pleadable by the Party in Bar to an Indictment. *Id.* 97, 98. — Indictments preferred to Appeals.

Yet, *Idem* 104. it's said, If the Appeal be the same Readiness to be tried as the Indictment, then it ought to be preferr'd to it; but not, the Indictment may be proceeded upon, — *Aliter* if the Appeal be ready.

on, and the Conviction of Manſlaughter w
Clergy will be a good Bar to the App
Simile Id. 107.

Cauſe of Preference.

And alſo, that there may be a juſt Ca
for the Court to prefer the Indictment to
Appeal, though they are both depending
one and the ſame Seſſions or Aſſizes. *Ibid.*

Where 'tis more juſt to give Judgment and Clergy on the Indictment, *&c.*

But if upon an Indictment of Murder,
Party is convict of Manſlaughter, and i
mediately after, at the ſame Gaol Delive
the Wife or Heir of the Deceaſed ſhall
in an Appeal, That it is moſt juſt for
Court to call the Convict to Judgment
on the Indictment, and to allow him
Clergy before he be put to anſwer to the A
peal, and then he may plead the Convict
and Clergy in Bar of the Appeal. *Id.*

To bar the Appeal.

Vide tamen 3 *Mod. Rep.* 156. & 4 *Mod.*
100.

Where the Defendant may wave his P
of not Guilty, and demur to the Declaratio
for if that is not good, it is in vain to
to Trial. *Cro. Eliz.* 196. *int. Hume* & O
And it was agreed, That if it had been
judged againſt him, it had not been pere
ptory, but only a *Reſpondeas ouſter.*

Where the Defendant may wave his Plea, and demur.

Replication, when.

Where the Defendant pleads, the Plai
ought to reply *Sedente Curia. Vide* 1 *Bulſ.*

Where Defendant pleads over, Plantiff need not reply to that.

If in an Appeal of Murder by a Wom
the Defendant pleads *ne unq; accouple* in l
al Matrimony, *&c.* and *quoad* the Felony
Guilty; the Plaintiff may reply, That ſhe
accoupled in loyal Matrimony, without
ſwering to the Felony. *Cro. Eliz.* 223.
Withington & Dalaber. 3 *Leon.* 268.

He ought not ſo to conclude.

It's ſaid, he ſhould not conclude to
Felony, becauſe that is to demand two T

. Appeal 17, 48. and yet he ſhall not be und by the Certificate of the Biſhop, for may after plead not Guilty. *Br.* Appeal , 101. *Fitz. Coron.* 140. Not guilty after Certificate.

But where the Defendant pleads a Plea tri- le by the Common Law, and concludes over the Felony, the Plaintiff ought to reply, d conclude to the Felony. *Cro. Eliz.* 223. *Cur.* Where the Plaintiff muſt reply.

For the Defendant may plead as many atters as he will, ſo that they are all triable *Pais*, for the ſame Jury ſhall be charged ith both Iſſues; but when the Verdict is be taken, they ſhall be firſt ask'd as to at in Abatement, and if found for the ppellee, they ſhall be ask'd no further, but ſcharged. 1 *Syd.* 325. Many Matters pleaded. Jury firſt asked as to the Abatement.

It's ſaid, if an Approver confeſſes his Ap- eal falſe, the Defendant ſhall not be arraign- d, for 'tis as much as if the Defendant had nquiſhed him, and he ſhall be put to eath, *Stamf.* 148. *b. Vide* Pulton *de pace Re- s, &c. fo.* 178, *&c. Tit.* Approver. Confeſſion by an Approver.

When the Abettors in Appeal ſhall be in- uired of *per Weſt.* 2. *cap.* 12. which *vide* plained, 2 *Inſt.* 383, 384. *Vide* Pulton *de ce Regis, &c.* 321. *Pl.* 11. Abettors to be inquired of.

Alſo what Pleas the Abettors may plead. . *Ibid. Pl.* 12. Alſo concerning a Writ gainſt the Abettors by the Appellee. *Ibid.* . 14.

Proceſs in Appeal.

How to be directed when the Defendant wells in a County Palatine. *Stamf.* 69. To a County Palatine.

For

Approver. For Proceſs in Appeal, in Caſe of an A prover. *Vide Hale Pl. Cor.* 196.

Proper alſo to Indictments. For Proceſs and Proceedings that for t moſt part are common both to Appeals a Indictments. *Vide eund.* 209.

Only to Appeals. As proper only to an Appeal. *Vide R* Entries, and *Coke's* Entries, in *Tit. eod.* Pul *de Pace Regis & Regni* 156, *b.* 157, 158.

See alſo *Townſend's* Tables, and *Cornw* Tables. *Tit.* Appeal *per tot.* and ſee after.

The Pleadings in Latin, *&c.* In a Writ of Appeal, all the Pleadi are entred in *Latin*, but Counſel ought count in *French*, as in real Actions. *St Pract. Reg.* 85.

Safe to plead over. That if in an Appeal the Defendant ple in Abatement of the Writ, it is ſafe for h alſo to plead not Guilty: For if the W be adjudged good, it is peremptory, and ſhall not be permitted to anſwer over, b

Or may be condemned. ſhall be condemned upon the Writ, for more ſpeedy prooceding againſt ſuch O fenders in criminal Cauſes. *Ibid. Sed v ante.*

Diſcontinuance. That the Defect of any Proceſs or A peal, or the Non-appearance of the Plaint doth diſcontinue the Appeal, and makes End of the Action, as well as a Defect in Original Writ. *Ibid.*

No mean Day between Proceſs. For in an Appeal, when one Proceſs return'd, another ought inſtantly to iſſ without any Mean-Day between; ſo th there be no Ceſſation of the Proſecuti *Cro. Jac.* 284. But it ought to bear Teſte t ſame Day that the other was return'd. *Y* 204, 205. 1 *Bulſt.* 142, 143.

Example of Original Cap. And therefore where the Writ of App was returnable *Quind. Mich.* which was

Oct

ctober, and the *Capias* was teſted 23 *October*, eturnable *Octab. Hill.* it was held a Diſcon-nuance, notwithſtanding all was in one erm, which in Law is but one Day. *Cro. ac.* 283. *Yelv.* 204, 205. As alſo becauſe e *Capias* was returnable *Octab. Hill. viz.* 3 *Jan.* and the Exigent iſſued out the 24th; nd becauſe the Exigent was return'd 20 Exigent. une, and the *Allocat. Com.* bore Teſte 21 *Allocat. Com. &c.* une. *Vide* 1 *Bulſt.* 141, 142.

Judgment in Appeal.

One that ſtands mute upon an Appeal, is One that ſtands mute. have the ſame Judgment thereon, as if ute upon an Indictment; for which *vide* rial.

Vide Keling's *Rep.* 90. where Judgment Of a Conviction though Appeal commenced. n a Record of a Conviction of Manſlaughter ught to be given, though an Appeal be mmenced, and the Reaſons thereof.

That all Proceedings upon Appeals and Proceedings determined. dictments commenced at one Gaol-Deli-ry, unleſs Convictions thereupon, are de-rmined by that Seſſions. *Id.* 90, 91.

By Statute 3 *H.* 7. *cap.* 1. *ſect.* 15, &c. Acquitted upon an Indictment, to be detained. appears that a Murderer indicted ſhall be reſently arraign'd at the King's Suit, but at a Murderer being indicted, and acquit-d, ſhall not be ſet at Liberty, ſo that an Ap-al may be brought againſt him that was arraigned within the Year and Day after e Fact.

The Statute is to this Effect, *viz. Sect.* 15, In order that an Appeal may be brought within the Year and Day. c. That Principal or Acceſſary being ac-itted at the King's Suit within a Year d Day after the Fact, the Juſtices ſhall not

let them go at large, but either remand them to Priſon, or bail them till the Year and Day be up, in which Time the Wife or next Heir of the Party ſlain (whether the Offender be attaint or acquitted) may proſecute their Appeal, in caſe the Benefit of Clergy hath not been allowed. Alſo the Appellant muſt commence the Appeal in proper Perſon, but may after appoint an Attorney to proſecute it, (ſave only in ſuch Caſes where Battel lieth.) See the Statute.

Where Wager of Battel is allowed.

And in ſuch Caſe where Battel is allow'd it is ſaid, That if the Appellee wage Battel and is ſlain in the Field, the Judgment muſt be, that he was vanquiſhed in the Field *Ideo conſideratum eſt quod ſuſpendatur per Collum &c.* For until this Judgment, he is not attainted; and without it, the Lord can have no Eſcheat. 2 *Inſt.* 183. But note, That Trial by Battel is now diſuſed and over-ruled and the Trial is by the Country. And when ſuch Trial by Battel was in uſe, it was liable to many Counterpleas, Lets and Privileges on the Part of the Appellant. For which, ſee *Pulton de pace Regis & Regni* 186, 187, &c.

Precedents concerning Appeals.

Ll. Original in Maym. *Theſ. Brev.* 89.

Ll. For Appeals of Maym. againſt one *Hanſ. Ent.* 273, 274.

Ll. Againſt one Principal and two Acceſſaries in Fact. *Raſt. Ent.* 45. *Co. Ent.* 5 *Hanſ. Ent.* 276, 278.

Ll. Narr. upon an Original of Maym. *Hanſ. Ent.* 270, 271, &c.

Ll.

ſſ. De Lingua amputata. Wilk. Off. Sher. o, *&c.*

ſſ. Againſt Two Principals and Three Acſſaries. *Hanſ.* 270, 271, 276.

ſſ. Againſt Four appearing, and Two oers (whereof one was Principal) not aparing. *Id.* 273.

ſſ. Habeas Corpus for Surgeons to inform e Court of the Maym. *Raſt. Ent.* 46. *Townſ. Jud.* 283, 316.

ſſ. For Bars therein, Iſſues and Judgments; e *Hanſ. Ent.* 165, 168, 271, 274, 277. *&c.* o. *Ent.* 22, 23. *Raſt. Ent.* 46.

Upon Appeals of Robbery.

ſſ. Againſt one for Robbery. *Raſt. Ent.* 3, 55.

ſſ. Againſt the Acceſſaries before the Prinpals were attainted. *Dyer* 38. *Finch Law* 3.

ſſ. Againſt Two Principals and One Acſſary *poſt factum.* Raſt. Ent. 53, 54. with veral other Appeals of Robbery *in facto & ſt factum*, Verdicts and Judgments. *Raſt. ntr.* 53, 55, 285.

ſſ. Alſo ſee *Hanſ. Ent.* 168, 278, 279.

ſſ. Breve de Reſtitutione bonorum capt. &c. aſt. Ent. 52, 53, 55.

ſſ. Proceſs in Appeal. *Theſ. Brev. & Raſt. nt.* 48, 55, *&c.*

Upon Appeals of Death.

Appeals of Death by Wife, Son, Heir, rother, Couſin, *&c.* againſt Principals and ccеſſaries, with their ſeveral Bars and

Pleadings, Proceſs, Verdicts and Judgments. *Raſt. Ent.* 46, 47, 49, 50, 51, *&c. Co. Ent.* 51, 53, 54, 56, 57, *&c.*

Alſo ſee *Hanſ. Ent.* 257, 260, 261, 262, 266, 267, *&c.*

Rape.

Upon Appeals of Rape, *vide* Wilk. Off. Sher. 58, 59.

Concerning an Approver, *vide* Raſt. Ent. 42.

See more of Appeals, Bars, and Proceſs therein, in *Townſ. Tab.* and *Cornw. Tab. Tit.* Appeal.

Approver, vide *Appeal.*

What it is to be an Approver.

A Perſon indicted of Treaſon or Felony not diſabled to accuſe before competent Judges, confeſſing the Indictment, and ſworn to reveal all Treaſons and Felonies he knows, and then before a Coroner entering his Appeal againſt *Participes Criminis* in the Indictment within the Realm. *Hale Pl. Cor.* 192.

In *Cow. Interp. verb.* Approver, it is ſaid to ſignifie one, that confeſſing Felony of himſelf, appealeth or accuſeth another, one or more, to be guilty of the ſame; and he is called ſo, becauſe he muſt prove that which he

e hath alledged in his Appeal. *Stamf. Pl. or. fo.* 142.

Who may be an Approver, and who not. *ales Pl. C.* 192.

In what Cafes he may be an Approver. *l.* 193.

Of what Offences he may approve, which e, only thoſe contained in the Indictment, e it Felony or Treaſon. *Ibid. &* 194.

Before whom he may approve, as the Co-oner, appointed by competent Judges. *Id.* 94.

How demeaſned after Appeal, the Days hen he muſt appeal, and the Time to per-ct his Appeal, of his repeating his Appeal *erbatim* before the Court. *Id.* 195.

Of his Execution, if he make a falſe Ap-eal of Perſons beyond Sea, or not *in rerum tura*, or if he fail in the Repetition of his ppeal. *Ibid.*

What Proceſs may be upon ſuch an Ap-eal, what Proceedings upon the Trial there-f, and what Proceedings after. *Id.* 196, 97.

If an Approver confeſſes his Appeal falſe, e Defendant ſhall not be arraigned; for s as much as if the Defendant had van-uiſhed him, and he ſhall be put to Death. *tamf.* 148. *b.*

See alſo concerning an Approver, in *Pulton pace Regis, &c.* 177. *b.* &c. *Tit.* Approver.

Arraignment.

A Priſoner, at the Time of his Arraignment, ought not to be in Irons. *Hales P. C.* 212. *Quære.*

It was agreed, That all the Priſoners ſhould be arraigned the firſt Day, before any of them were brought to Trial; and the next Day, to proceed to Trial with one or more of them together, as ſhould be thought fit upon the Place. *Kel. Rep.* 8.

It was reſolved, That when Priſoners come to the Bar to be tried, their Irons ought to be taken off, ſo that they be not in any Torture while they make their Defence, be their Crime never ſo great. *Kel. Rep.* 10.

After an Attainder of Felony, the Priſoner may be arraigned of Treaſon, for the King's Intereſt. *Id.* 213.

So if he be indicted or appealed of Robbery or Death at the Suit of one, he ſhall be arraigned and tried at the Suit of another, becauſe they have ſeveral Intereſts in the Judgment, *Id.* 212.

But if the Appeal by one be not commenced till after an Attainder at the Suit of another, he ſhall not be arraigned upon the other Suit; yet if the firſt Attainder be pardoned, he ſhall be arraigned upon the ſecond Appeal commenced after the Attainder. *Ibid.*

When the Defendant hath pleaded to the Indictment, *Not Guilty*, the Clerk on behalf of the King, or his Attorney General, by way of Replication, ſays, *Culprit*, i.

Cul

Culp. priſt, which is an Averment of his Guilt, and a taking of Iſſue thereupon, as much as *paratus eſt verificare quod culpabilis eſt*; the like as in Civil Actions, *& hoc paratus eſt verificare*; *priſt*, in *French*, ſignifying the ſame with *paratus* in *Latin*; then the Priſoner being demanded how he will be tried, answers, *By God and the Country*, which is the ſame with a Rejoinder and joining Iſſue in a Civil Action, concluding *& de hoc ponit ſe ſuper patriam.* So that upon all Arraignments there is a Formality of Pleading obſerved, in effect the ſame as in Civil Actions. How an Appeal muſt be arraigned on Removal into *B. R. Kel. Rep.* 91.

A Clerk Convict by Stat. 8 *Eliz. cap.* 4. after Purgation, and by 18 *Eliz. c.* 7. after burning in the Hand, he ſhall be put to anſwer former Felonies upon Appeal or Indictment. *Hale P. C.* 213.

Concerning the Arraigment of Principal and Acceſſary. *Ibid. Vide* Trial.

If in an Appeal brought, the Writ be abated, the Defendant cannot be arraigned upon the Count, which is grounded upon this Writ, for the Writ is the Foundation of the Count, and if it fail, the Count muſt needs fail, for there is no Foundation for the Arraigment. *Stiles Pract. Reg.* 89. When the Writ in Appeal is abated.

That a Man was arraigned for ſtealing 12 Oxen, the Priſoner confeſſed he ſtole 20, and was again arraigned for the other 8, and had Judgment to be hang'd. *Ibid.* One arraigned confeſſed more.

If the Defendant in an Appeal be acquitted, he may be arraigned at the Queen's Suit. *Ibid. & Dier.* 121. Arraignment after Acquittal in Appeal.

Arraignment of *Bigamus* after Outlawry.

Vide eund. Pract. Reg. 89. How one outlawed upon an Indictment for having two Wives, was afterwards arraigned at the Bar made his Exception to the Indictment, had Counsel assign'd, and had Leave to bring a Writ of Error to reverse the Outlawry. *Ibid.* And it is noted, that a Prisoner in such Case cannot be admitted to bring a Writ of Error, until he shew some probable Matter of Error to warrant it. *Id.* 90.

Arresting of Persons.

WHAT private Persons may arrest or imprison for Felony, *&c.* which Arrest is either commanded and enjoined by Law, or permitted or allowed by Law. *Hale Pl. C.* 89, *&c.*

And Page 94. It is noted, that a Person committed for Treason, Felony, or other Crime, cannot be discharged till indicted and acquitted, or *Ignoramus* found, or discharged by Proclamation, or by the King's Bench upon *Habeas Corpus.*

Who may arrest upon an Hue and Cry, and the manner of levying thereof; where Felony is committed or a dangerous Stroke given. *Id.* 90.

How in Aid of an Officer that hath a lawful Warrant, in Fact or in Law, to arrest a Malefactor. *Ibid.* (*Vide* Hue and Cry.)

Of a permissive Arrest by a private Person. *Id.* 91.

Of Arrest by a publick Officer with and without Process of Law, as by Constable, Justice of Peace, *&c. Id.* 92, 93, 94.

Arrest

Arreſt of Judgment.

Four Days are regularly given to move Arreſt of Judgment; but the Court may large the Time if they pleaſe, and accordgly eight Days were given to *Oates*. *tes* 2d *Tryal* 56, 57.

Of old Time, the Party convicted had at aſt thirty Days to ſhew ſome Matter to arſt Judgment, which now (ſays Sir *Edward ke*) is gone in *diſuetudinem*; and great xpedition is now made in Pleas of the own concerning the Life of Man. *Sed de rte hominis nulla eſt cunctatio longa*. *Co. f.* 134. *b.*

Vide Judgment.

Vide Show. Rep. 335. Judgment arreſted on an Indictment of Perjury, becauſe the rjury was not well aſſigned.

Arſon, or Houſe-Burning.

WHERE the malicious and voluntary Burning the Houſe of another, is lony. *Hale Pl. Cor.* 85.

Where ſetting a Houſe on Fire, and not rning it, is no Felony. *Ib.*

Where the Intention to burn the Houſe *B.* whereby *C.* his Houſe is burnt, is Feny. *Ibid.*

Where the malicious Burning his own ouſe, to the Intent to burn others, may not Felony. *Ibid.* & 86.

Where

Where Burning of Barns and Stacks o Corn is Felony. *Id.* 86. But see after, *Hous Burning.*

Assize.

Assize, what.

AN Assize, is a Writ, and it lieth whe any Man is put out of his Lands, Te nements, or any Profit to be taken, in a ce tain Place, and so disseised of his Freehol *Vide* Terms *de le Ley. verb.* Assize. Also Assize, it is needful always that there one Disseisor and one Tenant, or otherw the Writ shall abate. *Ibid.* For the seve Divisions and Significations thereof, as Ass *de Novel Disseisin*, Assize of *Mort Dauncest post Disseisin*, Assize of fresh Force, *&c.* *eund. & Cow. Interp. Tit.* Assize, *& Stat. M ton, cap.* 3. *Marlebridge, cap.* 8. *& West.* 2. 26, &c.

Assize, how to be arraigned in *French.*

An Assize, is to be arraigned in *Fren* and first, the Plaintiff's Counsel doth pray Court, that the Defendant may be call which the Court grants, and thereupon is called by the Cryer, and if upon Calling he doth appear, then the Def dant's Counsel doth demand Oyer of Writ of Assize, and the Return of it, wh is granted, and thereupon he prays Leave the Court that he may imparl, which granted to a short Day after, and the J is adjourned by the Court to appear at t Day: This is said to be *Festinum remedi* and no so quick Dispatch in Civil Actio *Stiles Pract. Reg.* 87.

Festinum remedium.

Note: That the Jurors who are to try the Assize, are called Recognitors of the Assize, and are, before the Return of the Writ, to have a Writ of the Thing in demand. *Id.* 3. Yet the Jury is sometimes called, the Assize, as *Assisa venit recognitura, id est Jurates veniunt recognituri. Vide Lit. Chap. de Rents.* Jurors to try the Assize.

At the Day granted for the Defendant to imparl unto, the Defendant is called, and upon his Appearance, he pleads to the Assize in *Latin*, and upon this an Issue is joyned between the Parties, and the Recognitors are sworn to try the Issue, and the Counsel do proceed to give them their Evidence. *Vid. Pract. Reg.* 88. Pleadings in *Latin.*

And here it is observed, that in these Actions the Jury view the Land in question before the Evidence given; but in an Ejectment, the Jury have the View after Evidence given, and not then neither, but by Order of the Court, and Consent of the Parties. *Ibid. Pract. Reg.* View before Evidence.

But by Stat. 4 & 5 *Annæ Reginæ*, where it shall appear to the Courts at *Westminster* that it will be proper and necessary, That the Jurors, who are to try the Issues, should have the View of the Messuages, Lands, or Place in question, in order to their better Understanding the Evidence that will be given upon the Trial of such Issues; in every such Case the respective Courts, in which such Actions shall be depending, may order special Writs of *Distringas*, or *Habeas corpora* to issue, by which the Sheriff or Officer shall be commanded to have Six out of the first Twelve of the Jurors named in such Writs, Provision for View, by 4 & 5 *Annæ.* *Distringas, &c.*

or

or ſome greater Number of them, at the Place in queſtion, ſome convenient Time before the Trial, who then and there ſhall have the Matters in queſtion ſhewn to them by two Perſons in the ſaid Writs named, to be appointed by the Court. And the ſaid Sheriff or other Officer, who is to execute the ſaid Writs, ſhall, by a ſpecial Return upon the ſame, certify, that the View hath been had according to the Command of the ſaid Writs.

Special Return thereof.

Inquiry how to be.

How the *Inquiry* ſhall be in an Aſſize.

Note: That when an Aſſize is ſaid to be taken at large; that is, it is taken as well upon other Points as upon the Diſſeiſin. *Old Nat. Br. fo.* 105.

Upon Aſſize awarded at large.

If in an Aſſize by an Infant, the Tenant pleads a Matter in Bar, and the Aſſize is awarded at large to inquire of the Circumſtances, becauſe the Plaintiff is an Infant; yet the Aſſize ought to inquire of the Matter alledged in the Bar by the Tenant, or otherwiſe this is erroneous. 1 *Rol. Abr.* 278. *Let. P. Pl.* 1.

Bar.

And they ought firſt to inquire of the Bar. *Ibid. Pl.* 2. *& fo.* 279.

Inquiry of more than comprehended in the Bar, *&c.*

In an Aſſize by an Infant, if the Tenant pleads in Bar, upon which the Aſſize is awarded to inquire of the Circumſtances, the Aſſize ought to inquire for the Advantage of the Tenant as well as for the Plaintiff, of more than he hath comprehended within his Bar, if it be in Fortification of his Bar; becauſe although the Tenant hath not pleaded it in his Bar, yet he might have pleaded it in his Rejoinder, if the Plea had been of the Plaintiff

aintiff, and ſo the Aſſize had not been a-arded at large. *Ibid. Pl.* 3.

But it ſeems, the Jury is not bound to in-ire of ſuch a Thing which the Tenant uld not have pleaded in his Rejoinder thout a Departure. *Ibid. Pl.* 4. Of what they need not.

That when a Bar is pleaded in an Aſſize an Infant, and the Aſſize is awarded at ge to inquire of the Circumſtances, when e Aſſize hath inquired of the Bar; if they d this againſt the Plaintiff, they ought to quire whether he hath other Title. *Ibid.* 5. When of further or other Title.

In an Aſſize by an Infant, if the Tenant eads a Fine of the Anceſtor of the Plain-f, or other Matter of Record, and the aintiff makes Anſwer as he ought, this be-g a Matter of Record, and upon this the ſize is awarded at large, becauſe the Plain-f is an Infant, the Aſſize ought to inquire the Title firſt. *Ibid. Pl.* 6. When to inquire firſt of the Title.

And if they find the Title againſt the In-nt, they ſhall inquire whether they have her Title. *Ibid. Pl.* 7. Alſo of o-ther Title.

Note: Where the Tenant pleadeth a foreign leaſe in Bar to an Aſſize, whereupon the auſe was adjourned at the Day the Tenant aketh Default, therefore the Aſſize was ken at large, (that is) To inquire not only hether the Plaintiff was diſſeiſed, but alſo hether there be any ſuch foreign Releaſe. Aſſize taken at large.

r the ſeveral Significations of Aſſize, and e Intent and Effects thereof, *vide Cow. terp. verb.* Aſſize. *Fitz. Nat. Brev. fo.* 77, *&c.* The Signification and Effect.

See this Title of Aſſize at large in 1 R. *Abr. Tit.* Aſſize; and for the Pleadings therein *vide* Townſend's *Tables and* Cornwal's *Tables Tit. Aſſize.*

For Precedents in Aſſize, viz.

Precedents in Aſſize.

De Novel Diſſeſin.
De Mort Danceſtor.
De Darrein Preſentment.
De Offices.
De Nuſance:
De Eſtovers, &
De Common, with the ſeveral Pleas in Abatement, Bars, Judgments, and Proceſs therein; *vide* Townſend's *Tables, &* Cornwal's *Tables, Tit.* Aſſize; *Raſt. Ent. Co. Ent. Hern's Preſ. Winch. Ent. Rob. Entr. Vidian Ent. Booth's* Real Actions, *&c.*

Attainder.

Falſifying Attainders.

THAT an Attainder may be falſified by the Party, by Writ of Error, or by others as a Purchaſer in ſome Caſes, if he purchaſed before the Attainder, and after the Time of the Felony ſuppoſed. *Vide H. Pl. C.* 270.

If the Attainder was by ſuch as had no good Commiſſion, the Party himſelf may falſifiy it. *Id. Ibid.*

Principal is Attaint, and then the Acceſſary; Principal reverſes his Attainder, the Attainder of the Acceſſary is *ipſo facto* avoided. *Id. Ibid.* Vide *Acceſſary.*

Attaint of Treaſon, and then the Treaſon pardoned by Act of Parliament, the Party Heir ſhall falſify. *Id.* 271. Where *Fu- n fecit* is firſt found by the Coroner, may t be falſified. *Ibid. Vide* Forfeiture.

Note: That the Executor, as well as the ir of a Perſon attainted of Treaſon, may ing Error to reverſe the Attainder. *Show.* p. 13.

Pleading of Attainders.

ſſ. Pleading Attainder of Felony before ſtices of Gaol-Delivery. *Co. Ent.* 246. *Clift.* t. 190. *Winch. Ent.* 841.

ſſ. Of Treaſon before Commiſſioners: ſt. *Ent.* 413. *Co. Ent.* 79, 422, 482, 699. nch. *Ent.* 759.

ſſ. Of Treaſon by Act of Parliament. *Co.* t. 97, 241, 381, *&c.* 1 *Co.* 28. *Hern.* 612. nch. *Ent.* 723, 756.

ſſ. Of Treaſon before Commiſſioners, and nfirm'd by Act of Parliament. *Raſt. Ent.* 3. *Plowd. Com.* 384, 550.

ſſ. The like before the Steward of *Eng-* d. *Winch. Ent.* 844.

ſſ. The like of Treaſon, and ſhews not w. *Co. Ent.* 344.

ſſ. The like of Felony. *Id.* 62, 173.

ſſ. Of the Duke of *Somerſet. Id.* 482.

ſſ. Of the Duke of *Buckingham. Id.* 534.

ſſ. Of the Earl of *Leiceſter* and others. wd. *Com.* 384.

ſſ. Of the Lord *Seymour. Co. Ent.* 381, 446.

ſſ. Of the Lord *Hungerford. Co. Ent.* 97.

ſſ. Of the Lord *Norris. Id.* 241.

ſſ. Of Sheriff *Lovel. Idem* 478. *Plow. Com.* 8.

ſſ. Of *Jo. Bury. Co. Ent.* 699.

ſſ. Of *Wyat. Id.* 79. *Raſt. En.* 413. *Plow.* 449.

ſſ. Of *Littleton. Co. Ent.* 422.

ſſ. Of the Earl of *Warwick.* 1 *Co.* 28.

ſſ. That the Inteſtate was attaint of Burglary. 1 *Lut.* 603, 610.

Reverſing Attainders, &c.

Attainder of Treaſon reverſed, becauſe no Arraignment or demanding Judgment and becauſe there was Proceſs of *Ven. fa.* inſtead of a *Capias*, and likewiſe for that it did not appear that the Party was asked what he had to ſay, why Sentence, *&c.* 3 *Mod. Rep.* 265.

Upon Error to reverſe an Attainder, for that the Enquiry was on the Behalf of the King for the County, *&c.* and they are ſever'd in the Judgment, which was *pro Domino Rege & pro corpore com.* it ſhould have been *pro Domino Rege pro corpore comitatus* and the Particle *Et* ſhould have been omitted, for which Cauſe it was reverſed.

Upon a Writ of Error in Parliament to reverſe an Attainder for Treaſon, many Errors were aſſigned, but the moſt material Error was in the Judgment it ſelf, viz. *Quod interiora ſua extra ventrem ſuum capiantur*, omitting *ipſoque viuente comburentur*, for which Reaſon it was reverſed. 4 *Mod. Rep.* 395, 401. And to an Objection, that ſuch an Execution was impoſſible in Nature, an Inſtance was given in Colonel *Harriſon*, one of the Regicides, who was cut down alive and after his Entrails were taken out of his

Bod

Body, he roſe up, and had Strength enough left to ſtrike the Executioner. *Id.* 402.

There is alſo a Writ of Attaint which lieth againſt a Jury of 12 Men who give a falſe Verdict, and this is grounded upon the ſtatute 23 *H.* 8. *cap.* 3. For which, ſee after *Tit.* Attaint.

Attaint of Jurors.

Attaint of Jurors, what.

THIS is a Writ that lieth after Judgment, againſt a Jury that hath given a falſe Verdict in any Court of Record, (be the Action real or perſonal) if the Debt or Dammages ſurmount the Sum of 40 *s.* It ſeems to be ſo called, becauſe the Party grieved endeavoureth thereby to ſtain the Jury with Perjury. *Vide Fitz. N. B.* 105. *Terms de la Ley, & Cowel's Interp. verb.* Attaint, *& Co. Lit.* 394.

For a Verdict contrary to the Evidence.

An Attaint doth lie againſt a Jury that do give their Verdict contrary to the Evidence that is given to them, by Stat. 23 *H.* 8. *cap.* 3.

Severe Puniſhment.

It is ſaid, the Puniſhment of Jurors for a falſe Verdict, by the Common Law was ſo ſevere, that few or no Juries upon juſt Cauſe were convicted. 3 *Inſt.* 163.

Mitigation by Stat.

But this Severity hath been mitigated by the aforeſaid Stat. 23 *H.* 8. *cap.* 3, *&c.*

Recovery againſt all the Jurors.

By 11 *H.* 6. *cap.* 4. the Plaintiff in Attaint ſhall recover his Coſts and Dammages againſt all the Jurors, Tenants and Defendants.

If the Thing in Demand extendeth to 40 l.

By the ſaid Stat. 23 *H.* 8. *cap.* 3. in an Attaint where the Thing in Demand extendeth to 40 *l.* and concerneth not Man's Life, the

Party grieved by the untrue Verdict, ſhall have a Writ of Attaint againſt every Perſon ſo giving an untrue Verdict, and every of them, and againſt the Party which ſhall have Judgment againſt the ſame Verdict. And that in the ſame Attaint, there ſhall be awarded againſt the Petit-Jury, the Party and the Grand-Jury, Summons, Reſom, and Diſtreſs Infinite. The Iſſue to be tried by 24 of the ſaid Grand-Jury.

Proceſs.

Value of the Grand-Jury.

Every of the Grand-Jury in ſuch Attaint, muſt have Lands to the Value of 20 Marks. And if they find that the ſaid Petit-Jury gave an untrue Verdict, then every of the ſaid Jury to forfeit 20 *l.* one half to the King, the other to the Party who ſueth, and ſhall make Fine and Ranſom at the Diſcretion of the Juſtices, and never after be in any Credence, nor their Oath accepted in any Court. And ſuch Attaint brought, is maintainable as long as two of the ſaid Petit-Jury do live: Nor is it abatable by the Party, or any of the ſaid Petit Jury; yet it ſeems not to lie after the Death of any of the Petit 12. (See hereafter, *Let.* F.)

Forfeiture of Petit-Jury.

If the Value be under 40 l.

And if the Attaint be of a Thing under the Value of 40 *l.* then every of the Grand-Jury ought to be capable to diſpend five Marks by the Year of Freehold out of the ancient Demeaſn, or is worth 100 Marks of Goods and Chattels. And if the Petit-Jury be attainted, then every one of them to forfeit 5 *l.* whereof one half to be to the King, the other half to the Party, and to make Fine and Ranſom at the Diſcretion of the Juſtices, as aforeſaid. *Id. Stat.* 23 *H.* 8. *c.* 3.

Forfeiture of Petit-Jury.

Upon

pon what Inqueſt it lies. Vide 1 *Rol.* Abridgment 280. A. *Tit.* Attaint. — Upon what Inqueſt.

Upon what Inqueſt an Attaint lies. *Yelv.* . But it lies not upon an Inqueſt of Office. *Lit.* 355. *b.* — Not of an Office.

But it ſeems to lie upon a Verdict before e Sheriff in a Writ of Enquiry of Waſte. *Lit.* 355. — In Waſte.

Where it lies againſt the Executors of the rty for whom the Judgment was given. *Lit.* 294. *b. Moo.* 17. *Pl.* 60. *Kelw.* 210. *er* 201. *Pl.* 65. — Againſt Executors.

That it lies upon an Inqueſt before the eriff in Re-diſſeiſin. *Sed dubitatur.* 1 Rol. r. 280. *Pl.* 3. — Re-diſſeiſin.

That it lies not upon a Verdict in an At- nt, unleſs they find collateral Matter *præter* Attaint. *Id. Pl.* 7, 8. — Attaint.

It lies not upon an Indictment. *Id.* 281. 16. Nor where the King is ſole Party, d the Verdict found for him. 4 *Leon.* 46. t 'tis otherwiſe where the Suit is *tam Dom. Rege, quam pro ſeipſo.* Id. & Cro. Eliz. 9. That the King alone may have an At- nt, for he cannot join with the Party. *V.* 2. *n.* 14. — Indictment *pro Rege.* — *Qui tam.*

It lies not for the not finding a Matter ich is not properly in their Conuſance, for not finding a Divorce, that being a cord. 1 *Rol. Abr.* 281. *Let. B. Pl.* 1. — Divorce, *&c.*

In what Court it lies. Ibid. Let. C.

In what Court. *B. R. & C. B. &c.*

It lies in the Court where the Record is; also in the *King's Bench*, or *Common-Pleas*, upon a false Verdict given before the Mayor and Bailiffs of *Lincoln*. *Per* 13 *Rich.* 2. *cap.* 18.

Hustings of *London.*

It lies in the Hustings of *London*, upon a Verdict given in any of the Courts of the City. 11 *H.* 7. *cap.* 21. *& per* 23 *H.* 8. *cap.* An Attaint in this Case may be brought upon either of the Acts; but *vide* 37 *H.* 8 *cap.* 5. Citizens shall not be compelled to appear out of the City for the Trial of an Attaint, notwithstanding 23 *H.* 8. *cap.* 3.

Privilege of Citizens.

No Conusance to be taken.

That no Conusance can be granted upon any Attaint, because all Attaints are to be taken either before the King in his Bench or before the Justices of the Common-Pleas and in no other Courts, *&c. Co. Lit.* 294.

Removal by *Certiorari.*

A Verdict and Judgment given in the Exchequer, was removed by *Certiorari* into the Common-Pleas, and an Attaint brought there. *Dier* 201. *Pl.* 65. *int.* Austin & Baker Kelw. 210. *a. Moo.* 17. *Pl.* 60.

Judgment against the Plaintiff for not removing the Record.

Vide Dier 81. *Pl.* 65. *Cro. Eliz.* 645, 64 In which Book, because the Record was not removed in *Banco*, it was adjudged against the Plaintiff, and the Court would not grant him a Day to bring in the Record, and said The Plaintiff at his Peril, ought to have brought it in before. And *vide* Cro. El 371, 372. how to be removed. *Et vide Moo.* 17. *Pl.* 60. *Instit.* 214.

Proceedings notwithstanding a Removal by Writ of Error.

But if an Attaint is brought upon a Judgment in *Banco*, and thereupon the Plaint assig

igns the falſe Oath, and the Defendant eads *Bonum & legale fecerunt ſacramentum*, d thereupon they are at Iſſue, and after the Record is removed by a Writ of Error; t the Proceſs againſt the Grand-Jury and rty ſhall not be ſtay'd, but the Court may oceed. *Dier* 248. *Pl.* 35.

That all Attaints muſt be taken in the *ng's-Bench* or *Common-Pleas*, and not elſe-here, but a *Niſi prius* may be granted, *&c.* *H.* 8. *cap.* 3. Attaints where to be taken.

For what Cauſes it lies. Ibid. *Let.* D. For what Cauſes.

Where it lies for finding falſly a Matter Form only, the principal Matter being e. *Kelw.* 67. For Matter of Form.

Where the Evidence of a Witneſs is falſe an immaterial Part, the Jury need not give n Credit in any other Part. *Cro. Eliz.* 310. Falſe Evidence.

If a Jury find a ſpecial Matter which is t Part of their Charge, nor pertinent to Iſſue, no Attaint lies for this. 11 *Co.* 13. *ddle & Napper.* Not Part of their Charge.

Neither does an Attaint lie for a Thing ich is but Surpluſage, nor for that which s not given in Evidence. 1 *Rol. Abr.* 281. D. *Pl.* 2, 4, 5. Surpluſage

e Default of the Court. 1 Rol. Abr. 282. *Let.* E.

Attaint lies not where the Court adjudge oneouſly. *Ibid. Pl.* 1. *Cro. Eliz.* 309. Attaint 82. Not upon erroneous Judgment.

But following the Direction of the Court ll not bar an Attaint: For if the Judge declares Where Direction of the Court will not bar Attaint.

clares the Law to the Jury erroneously, and they find accordingly; tho' this may excuse them from the Forfeitures, yet however upon the Attaint, the Judgment is to be reversed, and a Man shall not lose his Right by the Judges Mistake of the Law. *Vaugh.* 145.

Aliter where the Matter is false.

Yet if the material Matter which they found, upon which they referr'd the Matter in Law to the Court, be false, an Attaint lies thereupon. 43 *Ass.* 41.

At what Time.

At what Time it lies. Id. *Let.* F.

Before Execution.

It lies before Execution sued. *Ibid. Pl.* 1.

Not after Death of, *&c.*

It lies not after the Death of any of the Petit 12. *Ibid. Pl.* 5. *contr.* 2 *H.* 3. 4, 18.

Neither lies it after the Death of the Witnesses join'd to the Inquest. *Ibid. Pl.* 7.

Who shall have it, &c. *Ibid.* Let. G.

For the King.

The King shall have an Attaint upon a false Verdict in a *Quare impedit*. *Ibid. Pl.* 1.

For the Vouchee.

The Vouchee may have an Attaint upon a false Verdict given between him and the Tenant, upon the Deed of *Lien* denied. *Ibid. Pl.* 2, 3.

By a Reversioner.

It may be had by the Reversioner, and that by the Common Law, after the Death of Tenant for Life. *Dier.* 1. *Pl.* 5. 3 *Co.* 4. *a.* And during the Life of the particular Tenant, *per* 9 *Rich.* 2. *cap.* 3. 23 *H.* 8. *c.* 3. *par.* 7. So

By Party to the Recovery.

by him who is a Party to the Recovery, tho' he was not Tenant at the first Writ, nor when Judgment was given. 41 *Ed.* 3. *c.* 19.

But

But it may not be had by him that is no Party to the Writ or Iſſue. 1 *Rol. Abr.* 283. *Let. H. Pl.* 3, 4, &c. But 'tis otherwiſe if the Party be bound by the Dammages given by the firſt Verdict. *Aiter.*

As if in Treſpaſs againſt two, one pleads Not Guilty, and this is found againſt him, and exceſſive Dammages given; and after the other Defendant comes and pleads, Not Guilty, and this is found againſt him alſo. He may have an Attaint upon the firſt Verdict, becauſe bound by the Dammages given thereby; and tho' he is a Stranger to the Iſſue, yet he is privy in Charge. 11 *Co.* 5. *b.* in *John Heydon*'s Caſe. Where the Party is bound by the Dammages given.

In what Things the falſe Oath may be aſſigned, and how. 1 Rol. Abr. 283. 284, *Let.* I, K, & L. Aſſignment of falſe Oath.

The falſe Oath is not to be aſſigned in that which was admitted by the Plea, nor in a Matter which was pleaded by the other Defendant only. *Pl.* 1. In what Matter.

The falſe Oath ought to aſſigned in a ſpecial Point only. *Ib. Pl.* 1, 2. In a ſpecial Point.

Where the Certainty appears by the Record, it may be *in omnibus quæ verſus ipſum dixerunt*, without aſſigning it in ſpecial, as to ſay *in hoc, & in hoc.* Ibid. *Let.* L. *Pl.* 1. *In omnibus quæ dixerunt.*

In exceſſive Dammages, it ought to be aſſign'd in this manner *ſcil.* That the Goods for which the Dammages were given, were not of the Value of 40 *s.* and that in the Dammages given over this Sum they made falſe Oath. *Ibid. Pl.* 2. In exceſſive Dammages.

What ſubſequent Act will take away an Attaint. Id. 284. *Let.* M.

Exceſſive Dammages abridged, takes away an Attaint.

If a Jury give exceſſive Dammages, and the Court abridge them and make them reaſonable, no Attaint lies againſt the Jury, tho' they have made a falſe Oath; for ſuch Abridgment is made upon the Prayer of the Party, *ergo* he ſhall not have an Attaint alſo, and now alſo he is not at any Prejudice thereby. *Ibid. Pl.* 1.

So Increaſe of Dammages.

So if the Court increaſes the Dammages and makes them reaſonable, whereas before they were ſmall; for the Smallneſs before the Increaſe, no Attaint lies, for the Cauſe aforeſaid. *Ibid. Pl.* 2.

So a Releaſe of Part.

So if the Jury give exceſſive Dammages, and after the Plaintiff to whom they are given releaſes part of the Dammages, by which the reſt of the Dammages which remain are reaſonable enough, no Attaint lies; for now the Cauſe of the Grief of the Defendant is taken away. *Ibid. Pl.* 3.

Bar.

What ſhall be a good Bar in Attaint. 1 Rol. Abr. 285. *Let.* N.

Nonſuit.

If the Plaintiff, in an Attaint after an Appearance, be nonſuit, this will be a good Bar in a new Attaint. *Ibid. Pl.* 1. *Vide* 23 *H.* 8. *cap.* 3. *par.* 2. *Br.* Nonſuit 39.

Peremptory.

That a Nonſuit in Attaint is peremptory. *Br.* Peremptory 29. *Stiles Pract. Reg.* 90.

Death.

That if the Party, for whom the Jury found the falſe Oath, die before the Writ

Attaint brought, the Action is gone, o-
erwiſe if he die pending the Writ. *Ibid.*
act. Reg. Dier 5. *a.* 291. *Pl.* 65.

But if the Proceſs in an Attaint be diſcon- Diſcontinu-
nued after Appearance and Aſſignment of ance.
e Attaint, by which the Writ abates, this
ill be no Bar of a new Attaint. 1 *Rol. Abr.*
5. *N. Pl.* 2.

Neither is it barr'd by a Releaſe of the Releaſe.
nceſtor, where 'tis brought by the Iſſue
Tail. *Ibid. Pl.* 4.

Neither ſhall the Nonſuit or Releaſe of *Simile.*
e Plaintiff prejudice his Companions. *Stat.*
H. 8. *c.* 3.

If ſuch Plea as the Party pleadeth, which Reſtoration.
in Bar of the ſaid Attaint, be found againſt
m that ſo pleadeth, then the Party that ſo
eth ſhall have Judgment to be reſtored to
at he loſt, with his reaſonable Coſts and
ammages. *Idem Stat.*

And by the ſaid Stat. *Par.* 5. Outlawry or Outlawry,
communication ſhall be no Plea againſt *&c.*
e Plaintiff in Attaint.

What Pleas the Petit-Jury may plead.
1 Rol. Abr. 285. *Let.* O.

Per 23 *H.* 8. *cap.* 3. After the Plaintiff hath
ſigned the falſe Oath, the Petit-Jury (if
ey be the ſame Perſons, and the Writ,
roceſs, Return, and Aſſignment good) ſhall
ve no Anſwer, but only that they made a Only that
ue Oath, unleſs the Plaintiff in an Attaint they made
on the ſame Verdict hath before been a true Oath.
onſuit, diſcontinued, or had Judgment a- Unleſs, *&c.*
inſt the Petit-Jury.

That

Excuſe. That the Petit-Jury can plead no Ple but ſuch as may excuſe them of the fa Oath. 12 *H.* 6. 6. *Kelw.* 130. *Fitz.* Attai 61, 65.

Tenancy. It is ſaid, the Petit-Jury cannot plea That the Plaintiff in the Attaint was Tena after the Attaint purchaſed. 12 *H.* 6. 6.

Award pleaded. In an Attaint upon a Verdict in Treſpa one of the Petit-Jury pleaded an Award b tween the Plaintiff and Defendant; and wh ther this was a good Plea, *dubitatur*. Kel 130. And by 6 *Co.* 44. held that it is a goo Plea. *Sed Q. & vide* Dier 75. Pl. 27.

Evidence. *Evidence.* 1 Rol. Abr. 285. *Let.* P.

Where no Regard thereto. *Vide* where in an Ejectment, no Eviden was given as to the Dammges, nor Rega had thereto by the Jury; and therefore, fo the exceſſive Dammages, no Attaint la *Dier* 369. *Pl.* 55.

No more Evidence than, *&c.* That in an Attaint, more Evidence canno be given to attaint the firſt Jury, than w given to the firſt Jury, for no Default w in the firſt Jury if it was not ſhewn t them. *Rol. Abr. Let.* P. *Pl.* 1.

Where more Evidence may be given. But the Defendant may give more Ev dence in Affirmance of the firſt Verdict. *Di* 52. *Pl.* 14. But then the Plaintiff in the At taint may have an Anſwer thereto, and di prove it as well as he can; but he canno give other Evidence, nor inforce the fir Evidence with more Matter than was give and diſcloſed before. *Dier* 212. *Pl.* 34.

Not of a Record, *&c.* The Plaintiff cannot give in Evidence Record which was not given to the Petit Jury, for they were not bound to find it

1 *Rol.*

Rol. Abr. 285. P. *Pl.* 2. *Dier* 129. *Pl.* 65. Attaint 87.

Judgment therein. 1 Rol. Abr. 285. Judgment.

Let. Q.

The Punishment of the Petit-Jury by the Common Law, was very severe, *viz.* That the Petit Jury were convicted in Attaint, the Judgment was, That they should be out of the Law and Testimony, and their Goods and Chattels forfeited, and their Wife and Children thrown out of their Houses, and their Lands and Tenements wasted and destroyed, and their Land seized into the King's Hand. *Vide ibid. Pl.* 1. But this Severity was mitigated by Stat. 23 *H.* 8 *cap.* 3. before observ'd. The Judgment formerly was very severe.

That such Judgment in effect throughout given in Attaint by the Law of *Scotland*. *Rol. Abr.* 285. *Pl.* 2. *Simile* in *Scotland.*

If a Man recover in Attaint, he shall be restored to all that he hath lost by the Verdict. *Idem. Pl.* 3. Restoration.

And by Stat. 9 *Rich.* 2. *cap.* 3. If during the Life of Tenant for Life, the Reversioner recovers in an Attaint, the Tenant shall be restored to the Possession and mean Profits, and the Reversioner to his Arrearages of Rent. But if the Tenant be dead at the Time of the Judgment given in Attaint, that Restitution of the said Tenements be to the Party pursuing with the Issues after the Death of the dead Tenant, together with the Arrears of Rent, *&c.* Tenant to the mean Profits, *&c.* And Reversioner to his Arrearages, *&c.*

If

Reſtoration to the Land. If Man a recovers in Attaint upon a Verdict in an Action, in which he hath loſt Land, he ſhall be reſtored to the Land again. 1 *Rol. Abr.* 285. *Pl.* 4.

To Dammages. If a Man recovers in an Attaint upon a Verdict in which he loſt Dammages, he ſhall be reſtored to them. *Ibid. Pl.* 5.

To meaſn Profits. If a Man recovers in Attaint upon a Verdict in which he loſt Land, he ſhall be reſtored to the meaſn Profits. *Id.* 286. *Pl.* 7.

To the Land. If a Man brings a Formedon, and the Tenant pleads a Releaſe, for which the Demandant brings an Attaint, and the falſe Oath is found, he ſhall have Judgment to recover the Land. *Ibid. Pl.* 8.

To his Debt. So if a Man brings Debt, and is barr'd and he brings an Attaint, and it is found for him, he ſhall recover his Debt. *Ibid. Pl.* 9.

To the Iſſues of the Land. And if the Iſſue in Tail recovers the Land in an Attaint upon a Recovery againſt his Anceſtor, he ſhall recover the Iſſues of the Land from the Death of the Anceſtor. *Ibid. Pl.* 10.

Vide 11 *Hen.* 7. *cap.* 21. concerning the Judgment upon an Attaint brought in the Huſtings of *London*.

Precedents.

Original. *ſſ.* For Precedents in Attaint, *viz.* For the Original Writ, *&c.* Reg. Orig. 170, 204, 205, 210, 225. *Reg. Judic.* 40. *Theſ. Brev.* 86. *Raſt. Ent.* 86.

In quibus actionibus, &c. *ſſ. In quibus actionibus & Cur. Reg. Orig.* 108, 170, 205, 208, 122, 224, 225, 226, 231, *&c. Raſt. Ent.* 84, 86, 88, *&c. Ca. Ent.* 63, 66, 68, 70, 73, 76, 77, *&c. F. N. B.* 105

5, 106, 108, *&c. Hern.* 32, 36, 38, 39, *&c.*
e Officin. Brev. 11. *Rob. Ent.* 141, 144.
Brown's Ent. 41. *Booth's* Actions, 256.

f. Aſſignment of the falſe Oath. *Raſt.* 85, 89. *Co. Ent.* 66, 67, 70, 76, *&c. Hern* 40, *&c. Officin. Brev.* 11. *Rob. Ent.* 143, 5, 151. 2 *Brown's Ent.* 44. — Falſe Oath aſſigned.

f. Bar inde, bonum & legale fecer. Sacramen-
n. Raſt. 85, 87, 88, *&c.* Co. Ent. 66, 67, *&c.* Officin. Brev. 11. Rob. Ent. 143, 5, 151. 2 Brown's Ent. 44. — Bar *inde.*

f. Judicia inde, Veredictum & Judic. pro
er. Raſt. 85, 92. Rob. Ent. 52. 2 Townſ. dg. 29. — *Judic. pro Quer.*

f. Simile quod Recogn. Aſſiſe fec. falſum Sa-
mentum, & Judict. inde juxta Statut. 23 H. Hern. 40. 2 Townſ. Judg. 30. — *Juxta Statut.*

f. Quer. non proſ. Raſt. 93. Co. Ent. 66. Townſ. Judgm. 326. — *Non proſ.*

f. Quod Def. & Jur. eant inde ſine die. . Ent. 68. 1 Townſ. Judg. 327. Hanſ. 9. — *Pro Def.*

f. Littere paten. de pardonacone, prolat. &
citat. Rob. Ent. 152. — Pardon.

f. Judicium ſpeciale. 2. Jur. mortui, Judi-
m verſ. reliquos in tranſ. de proprietate bonor. Townſ. Jud. 1. — *De proprietate.*

f. Veredict. & Judic. pro Def. Raſt. Ent. *bis.* Co. Ent. 77, 83. 1 Townſ. Judic. 325. — *Pro Def.*

For the Variety of Proceſs therein, *vide* ownſ. *Tables*, 65, *&c.* Tit. *Attaint.* Corn-al's *Tables*, 78. Tit. *eund.* — Proceſs.

Auterfoits

Auterfoits Acquit, &c. *Vide* Acquittal & *vide* Arraignment.

Auterfoits Acquit, a Bar.

THIS in ſome Caſes is a Plea in Ba and he that can have this Plea, ne not have the Record in *Poigne*, becauſe goes in Bar. 3 *E.* 3. *B. Coron.* 217. *H. P. Coron.* 245.

Where allowed formerly, but not now.

Formerly in an Appeal of Death, or othe Felony, Auterfoits Acquit upon the ſame Fe lony was a good Bar in all Caſes; therefo if an Appeal was pending the Court, woul ſurceaſe the Arraignment of the Priſoner up on an Indictment until it was determined Or though no Appeal pending, yet in Ca of Death, would ſurceaſe till the Year paſt.

Not in an Indictment of Death.

But at this Day, Auterfoits Acquit in a Indictment of Death is no Bar to an Appea by Stat. 3 *H.* 7. *cap.* 1. for the Priſoner, no withſtanding the Acquittal; but thatin othe Appeals it ſtands a Bar to an Appeal. *Hale P. Cor.* 245, *&c.*

Not upon an inſufficient Indictment.

That if a Perſon be acquitted upon a inſufficient Indictment or Appeal, yet upo a new Indictment he may be arraign'd fo the ſame Felony. 4 *Co. Rep.* Vauxes *Caſe*. See after.

***Aliter* if in an Appeal.**

But Auterfoits Acquit in an Appeal, wil be a Bar to an Indictment of the ſame Fe lony.

Exceptions.

1. Unleſs the Appeal be erroneous in Subſtance.

2. Unleſs the Appeal be by a wrong Perſon.

3. Or

. Or unleſs the Acquittal be by Battel: For
heſe Caſes he may be indicted again.
le Pl. C. 245.

Yet, that Auterfoits acquit of one Felo- Of one Felony no Bar to another.
is no Bar to an Indictment, or Appeal
another Felony, *&c.* though committed
ore the Acquittal.

That Auterfoits acquit as Principal, is no Not where formerly acquitted as Principal.
to an Indictment againſt him, as Acceſ-
to the ſame Felony after; but it ſeems,
cannot be indicted as Acceſſary before.
P. C. 105, 106. *H. P. C.* 244.

ide Acceſſary, *& vide* Principal *and* Ac- Q.
ceſſary.

Alſo where it may be a Plea in Bar, in Where it may for Variance, *&c.*
e of Variance between the Indictment,
or in the Name of the Party, or Day
he Felony ſuppoſed, or in the Place.

But it ſeems Acquit of Larceny in one County.
unty, is no Bar in another. 4 *H.* 5. *&*
le Pl. Cor. 246.

. Anterfoits Acquit *de* Felony. *Vide* Vidi-
Ent. 207.

Auterfoits Convict.

This Plea alſo may in ſome reſpect be a Auterfoits Convict.
in Appeals and Indictments of Felony.
t was obſerved before, That Auterfoits ac- Acquit.
t upon an inſufficient Indictment, *&c.* is
Bar to a new Indictment for the ſame Felo-
Vauxes Caſe, 4. *Rep.* But that is where no *Nota.*
gment is thereupon given; for otherwiſe

'tis

'tis a Bar, if Judgment be given, until ſuch Judgment be reverſed.

Convict, *&c.* in Indictment, Bar in Appeal.

Where Auterfoits convict by Verdict Confeſſion of Manſlaughter in an Indictme and had Clergy, is a Bar in an Appeal, t it be of Murther; for the Fact is the ſa in both, though the Offences differ in D gree. 4 *Rep.* 45. *int.* Wrote *&* Wiggs.

Where formerly a Bar one to another.

That Auterfoits convict, and had Cler after Stat. 25 *E.* 3. *c.* 5. had been a Bar an Arraignment for another Felony, thou not within Clergy. *Dier.* 214.

Aliter by Statute-Law.

But that now by Stat. 8 *Eliz.* 4. after P gation, and 18 *Eliz. cap.* 7. after Burning the Hand, he ſhall be put to anſwer for Felonies not within Clergy, or for any O fence after Clergy allowed.

Where he muſt plead over.

And it is noted, That he that pleads Plea in Bar to an Indictment or Appeal, t confeſſeth not the Felony, ſhall plead over the Felony; otherwiſe if it confeſs the F lony as Pardon or Releaſe. *Vide ante Tit.* A peal. *Et vide poſtea Tit.* Pardon.

Nota. *Vide* Co. Ent. 54, *&c.* Bar *per* Conviction of Manſlaughter within the Verge whe upon he prays Clergy. *Cur adviſare vult* and no Judgment thereupon given, Demur and Judgment for the Defendant.

Auterfoits Attaint.

Auterfoits Attaint, is a Bar.

Auterfoits Attaint of the ſame Felony an Appeal, is a Bar to an Indictment, the Effect is obtained, the Death of the Par but no Bar in an Appeal. *C. Pl. C.* 213. *Pl. C.* 247.

That Auterfoits Attaint of Felony, is no r to arraign him of Treaſon committed fore the Felony for the King's Intereſt. *P. C.* 107. Where not.

And that it ſeems, if the Treaſon was mmitted after the Felony, then he ſhall be aigned of the Treaſon, for the Offence is ferent. *C. P: C.* 213. Not where the Offence differs.

That Auterfoits Attaint of Felony, may a Bar to an Arraignment of Felony; but nath ſome Exceptions: As where the firſt tainder is pardoned, there he may be ar- gned for the former Felonies, though com- tted before. Attaint of one Bar to another. Exception by Pardon.

That in caſe of Appeal, he ſhall be ar- gned at every one of their Suits, not- hſtanding he be Attaint at one Suit. *Simile* in Appeal.

And the like it ſeems upon an Indictment Robbery, becauſe by the Statute the Par- is to have Reſtitution. *S. P. C.* 66, 107. *P. C.* 248. *Simile in Judic. Feloniæ.*

B..

Bail.

Who are bailable by Stat. *Weſt.* 1. *cap.* 15. (3 *Ed.* 1.)

BY the Statute of *Weſtm.* 1. *cap.* 15. r citing, That foraſmuch as Sheriffs a other, had taken and let out ſome whi were not repleviſable, and kept in Priſon ther that were repleviſable, and that it h not been determined what Perſons we repleviſable or not, but only ſuch as be ken for the Death of a Man, or by Co mand of the King or his Juſtices, or for Forreſt; It is provided, that Perſons outlaw abjured the Realm, Provers, and ſuch as taken with the Mannor, Breakers of Priſ Thieves openly defamed, and known A pellees by Provers, ſo long as the Prov live, Houſe-Burners, thoſe taken for f Money, or counterfeiting the King's S Perſons excommunicate and taken at Prayer of the Biſhop, or for manifeſt Offen and Treaſon againſt the King himſelf, not repreviſable by the Common Writ without: But ſuch as are indicted of Lar ny by Inqueſt, before the Sheriff or Bail by their Office, or of light Suſpicion, Petty-Larceny not above the Value of 1 if not guilty of other Larceny before, thoſe guilty of Receipt of Felons, or of Co mandment, Force, or Aid in Felony d or other Treſpaſs, for which one ought loſe Life or Member; the Appellees by Prov

ter the Death of the Provers, (if no common Thief, nor defamed) ſhall he let out upon ſufficient Sureties (for which the Sheriff will anſwer) without giving ought of their Goods, *&c.* So that it appears, Perſons guilty of Larceny, by Inqueſts taken before Sheriffs or Bailiffs, or of Petty-Larceny not before detected, or Acceſſary unto any Felony, or only guilty of ſome Treſpaſs for which he ought not to loſe Life or Member, are bailable by good Sureties. *Stat. ubi ſupra.* To bail thoſe who are not bailable, and refuſe to bail thoſe who are, is puniſhable by Fine and Impriſonment. *Stat. ubi ſupra.* Hale P. C. 97.

Expoſition of this Statute.

It is obſerv'd, That this Statute beginning with inferior Officers, extends not to Judges of ſuperior Courts, and they do not take or keep any, *&c.* 2 *Inſt.* 185, 186.

To replevy to Bail.

That to replevy, or plevy, is properly apply'd to the Sheriffs taking Pledges and Bail to the higheſt Courts of Record. 2 *Inſt.* 186.

Not by the Sheriff.

It is alſo intended, That ſuch as be taken for the Death of a Man, or by Command of the King or his Juſtices, or the Forreſt, were not bailable by the Sheriff. 2 *Inſt.* 186.

Manſlaughter.

And that yet, by 2 *&* 3 *Ph. & M. cap.* 13. it appears, That in caſe of Manſlaughter, Bail may be taken in ſome Caſes, and that therefore this Clauſe muſt be intended of ordinary Bail. *Poyne's* Caſe. 1 *Rol. Rep.* 268. 3 *Bul.* 113.

Impriſoned by Command of the King.

By lawful Proceſs in a legal Courſe, *&c.* 2 *Inſt.* 186, 187. But yet if he is impriſoned upon the perſonal Command of the King only,

only, though it is illegal, yet he cannot be bailed by the Sheriff, but by the Courts at *Weſtminſter* by an *Habeas Corpus*. 2 Inſt. 187.

Or his Juſtices, &c.

Where it is ſaid, Or by Command of the King or his Juſtices, or for the Forreſt, *per Stamf.* 72, This is intended of his perſonal Command by his own Mouth, or of his Council, which is incorporated into him. *Vide* 1 *Rol. Rep.* 134. *vide poſtea.*

King's Council.

Taken for Vert, &c.

But how ſuch as are taken for Vert or Veniſon, ſhall be mainpriſed, and by whom. *Vide* 1 *Ed.* 3. *cap.* 8.

Perſons outlaw'd.

As to the Outlawed, &c. If upon a *Capias utlegatum*, he pleads Miſnomer, or alledge Error, he may be bailed. 2 *Inſt.* 188. *Stamf.* 74. But yet *vide Stiles Rep.* 410. where one outlawed for a Robbery, &c. brought Error, and was denied Bail in *B. R.*

Life of the Provers.

As to the Life of Provers (which ſo long ſerves in nature of an Indictment), if the Prover waves his Appeal, the Appellee ſhall be bailed, if there be no other Appeal againſt him. 2 *Inſt.* 188. *Stamf.* 74.

Second Appeal.

But though he vanquiſh the Approver, yet if he be appealed by another Approver, he ſhall not be bailed. *Stamf.* 74.

Excommunication.

Caution accepted.

But if Biſhop will not, &c.

And as to that Clauſe which relates to Excommunication, if the Party offers ſufficient Caution, *de parendo Mandatis Eccleſiæ in forma Juris*, the Party ſhall have a Writ to the Biſhop to accept his Caution, and to cauſe him to be delivered; and if the Biſhop will not ſend to the Sheriff for his Delivery, he ſhall for that Purpoſe have a Writ to the Sheriff. 2 *Inſt.* 189.

When taken upon a *Capias Excom.*

But he that is taken upon a *Capias Excommunicatum*, upon 5 *Eliz.* though he is not bailable by the Sheriff, *&c.* yet he may be bailed in *B. R.* 1 *Bulſt.* 122.

Not bailable for great Offences.

And it is obſerved, That for manifeſt and open Offences, and Treaſons, *&c.* Bail is not taken, but only where the Matter *ſtat indifferenter.* 2 *Inſt.* 189. And that any of theſe Offences are bailable in the *King's-Bench*, &c. 2 *Inſt.* 189. For the *King's Bench* hath a higher Power than any other, and can bail where another Court cannot. *Vide* Hale Pl. C. 104. See after.

Breve de Manucaptione.

And that upon this Statute, the Writ *de Manucaptione* is founded, which mentions the Particulars therein after-mentioned. 2 *Inſt.* 190.

Perſons indicted before the Sheriff or Bailiffs.

As to ſuch as are indicted before the Sheriff or Bailiffs, it is obſerved, That by 1 *E.* 4. *c.* 2. upon Indictments or Preſentments taken before Sheriffs and Bailiffs, or their Miniſters, at their Turn or Law-Days, they ſhall not arreſt, attach, or put in Priſon any Perſon therein, but deliver all ſuch Preſentments and Indictments to the next Juſtices of the Peace at their Seſſions, *&c.*

When bailed for Felony.

That a Man arreſted and impriſoned (and bailable) for Felony, ſhall be bailed before it appears whether he is Guilty or not; but if convicted by Verdict, or Confeſſion, *&c.* he is not bailable. 4 *Inſt.* 178.

When not.

So if upon Examination, a Man confeſſes the Felony, and the *Mittimus* before Felony confeſſed, he cannot be bailed. *Ibid.* & 3 *Bulſ.* 14. 1 *Rol. Rep.* 268.

Commitment by the King or Council-Board, &c.

That if one be committed by the perſonal Command of the King, or by Order from the Council-Board; or if any one or two of his Council commit one for High-Treaſon; ſuch Perſons may not be delivered by any Court without due Trial, and Judgment of Acquittal had. 1 *And.* 298. 1 *Rol. Rep.* 13[illegible] Vide *Moor* 839. *Pl.* 1132. & 1. *Mod.* 14[illegible] *Vide poſtea.*

Cauſe certified in a *Habeas Corpus.*

But in ſuch Caſe, upon the Return of a *Habeas Corpus*, the Cauſe of his Commitment muſt be certified to the Judges, which cannot conveniently be done, unleſs Notice thereof be given generally or ſpecially to the Gaoler in whoſe Cuſtody he is, &c. Yet *vide* 1 *Rol. Rep.* 134. where it was ſaid by the Chief Juſtice, That if the *King*'s-Bench or if himſelf committed one, though the Cauſe was declared, he is not bailable by any; for perhaps it is a Cauſe touching the State, which is not convenient to be known.

Aliter.

After an Indictment for Murder, Appeal brought.

A. being indicted for Murder, and ready to be tried, the Proceedings upon the Indictment were left off for a Time, upon Suſpicion of a partial Jury, and an Appeal brought; and though by the Appeal the Indictment was gone, yet becauſe the Default was on the Part of the Proſecutor, and not of the Priſoner, he was bailed. 1 *Bulſt.* *Morgan*'s Caſe.

Priſoner bailed.

Special Verdict, *Et Curia adviſare vult.*

If upon an Indictment of Murder, the Jury find a ſpecial Verdict, and thereupon there is a *Curia adviſare vult*, the Priſoner (it's ſaid) is not bailable. *Id.* 87, 88.

Clergy.

So where the Priſoner is found Guilty *& Curia adviſare vult*, whether Clergy is allowable or not. *Vide* Dier 179. *Pl.* 42.

A. being found guilty of Manſlaughter before the Coroner, and this being return'd *B. R. A.* prayed he might be bailed, becauſe there was no Indictment againſt him; but it was denied, becauſe notwithſtanding may be Murder. 1 *Rol. Rep.* 268. Poyn's *Caſe.*

Found guilty of Manſlaughter before the Coroner, *&c.*

Et vide Stiles, *Rep.* 371. Though the Priſoners were indicted of Manſlaughter only, yet the Court denied them Bail. And in *Bulſt.* 113. it was ſaid by the Chief Juſtice, That in caſe of the Death of a Man, he would not bail without the King's Command.

Simile in *B R.* and Bail denied.

Vide Lat. Rep. 12. Several indicted of Murder were bailed, becauſe no Trial could quickly be had, and they were in Danger of being ſtarved in Priſon. And by *Stil. Rep.* 418. One removed out of *Wales* by *Habeas Corpus*, was bailed, becauſe they have no Gaol-Delivery there.

Several indicted for Murder bailed.

By 3 *Bul.* 113. One indicted of Treaſon may be bailed. *Et vide* 1 *Bulſt.* 85. ſuch a Precedent ſhewed. But *per Raym.* 381. not *de Jure*, if not within the *Habeas Corpus* Act.

One indicted for Treaſon.

Per Stil. Rep. 116. A Woman was indicted for Felony and Witchcraft, and becauſe ſhe had twice before been acquitted upon other Indictments of the ſame Nature, ſhe was bailed in *B. R.* to appear at the next Aſſizes for the County.

One indicted for Felony and Witchcraft.

But one committed by the Council of State and Parliament, was denied Bail. *Stil. Rep.* 397. And it ſeems, the Chief Juſtice doubted whether one indicted for Perjury might be bailed; but it was ſaid by the Clerks, he might. *Id.* 368.

Commitment by Council of State, *&c.*

One indicted for Perjury.

One indicted of Murder bailed.

One indicted of Murder, was bailed in *B. R.* the Court being ſatisfied by Affidavits, That there was good Reaſon for it, four Perſons becoming Bail *Corpus pro Corpore*. 2 *Jones* 222. Farrington's *Caſe*. And that Juſtices of Peace cannot bail, but where they have Cognizance of the Cauſe; and therefore if a Man be taken upon a Proceſs of Rebellion out of Chancery, they cannot bail. *Hale Pl. C.* 105. *Vide poſtea.*

When Juſt. Peace may bail.

Proceedings, *&c.* removed from Seſſions into *B. R.*

If one is indicted, and there is Judgment againſt him at the Seſſions in the Country for Deer-Stealing, and he brings a Writ of Error, and thereupon all is removed into *B. R.* yet he ſhall not be bailed. *Vide* 1 *Syd.* 286. 2 *Keb.* 43. Becauſe there is no Remedy to bring him in Cuſtody again, if the Judgment ſhould be affirmed.

Bail denied.

Perſons fined in the Seſſions bring *Habeas Corp. &c.*

So where ſeveral in the Seſſions in *M.* were fined, and brought an *Habeas Corpus*, and Writ of Error, and prayed to be bailed. 1 *Syd.* 320. it was denied, becauſe in Execution for the King; but it was ſaid, it was common in the Crown-Office to bail in ſuch Caſes.

Where the Bail may be a Witneſs.

That a Bail for a Priſoner cannot be a Witneſs for him, unleſs the King's Council conſent. *Hambden's* Trial 82.

Where not bailable by Sheriff.

By the 4 *Ed.* 3. *cap.* 2. Such as are indicted, or taken by the Keepers of the Peace, and are not bailable by Law, ſhall not be let to Mainprize by the Sheriff or other Miniſter, nor delivered but at Common Law.

Aliter in *B. R.*

Yet the *King's Bench*, if they pleaſe, may bail in all Caſes, but if the Cauſe of Commitment return'd upon an *Habeas Corpus* be juſt, the *Common-Pleas* muſt remand. *Vaugh.* 157.

Upon

Upon a Writ of *Odio & Atia.* Vide 2 *Inſt.* 43.

By the 5 *Ed.* 3. *cap.* 8. The Marſhal of the K.'s-*Bench* ſhall not let to Bail his Priſoners, indicted or appealed of Felonies, *&c.* Not by Marſhal *B. R.*

Certifying Recognizances, &c.

Recognizances and Bail taken by Juſtices of the Peace, are to be certified into the Court the firſt Day of every Seſſions before Noon, for the Reaſons there mentioned. *Kelings* Rep. *fo.* 1.

Juſtice of Peace fined for Default.

And that the Juſtices of Peace who are remiſs herein, be fined by the Juſtices of Gaol-Delivery, according to the Statute of 2 *Ph. & M. cap.* 13. *Et* 2 *&* 3 *Ph. & M.* cap. 10. *Kel. Rep.* 2.

Felon bailed.

That no Priſoner for Felony be diſcharged during the Interval of Seſſions, unleſs it be upon good Bail taken, *&c.* Id. 3.

Difference between Bail and Mainprize.

The Difference between Bail and Mainprize, is, That Mainpernors are only Surety, but Bail is a Cuſtody; and therefore the Bail may reſeize the Priſoner if they doubt he will fly, and detain him and bring him before a Juſtice, and the Juſtice ought to admit the Priſoner in Diſcharge of the Bail,

Bail, or put him to find new Sureties and the like may be done by the Justice in Case of insufficient Bail, *Hale Pl. C.* 9

Concerning a Justice of Peace Bailing where he ought not.

If any Justice of the Peace shall take B where he ought not, or wittingly or w ling take insufficient Bail, and the Party pear not; the said Justice not only to proceeded against according to Law, likewise to be complained of to the L Chancellor, that he may be turn'd out o Commission. *Kel. Rep.* 3.

Where bailed before Clergy.

Idem Rep. pag. 90. Lisle's Case in B The Question was, Whether one convi of Manslaughter might be bailed befor had his Clergy; and adjudged he mi notwithstanding the Case of *Dier* 297, For though Justices of Oyer and Term and Gaol-Delivery might not bail in su Case, yet the *King's Bench* is not restra from bailing, by the Statute of 1 *W.* 2 *Inst.* 185. But hath a Liberty of Bai by the Common Law, if the Person be attainted. *Vide Co. Ent.* 355.

is to be obſerved, That before the Sta- of 1 *R.* 3. *cap.* 3. which is repealed 3 *H.* 7. *cap.* 3. No Juſtice of the Peace ld have bailed any one for Felony; for re this, he ought to have been bailed he Sheriff, or other Keeper of the Pri- where he was in Ward, or by the Con- le, and by no other Officer, unleſs Ju- es of the *King's-Bench*, Juſtices in Eyre, uſtices of Gaol-Delivery: And this Ob- ation was made *Trin.* 37 *Eliz.* by the ges at an Aſſembly at *Serjeant's-Inn.* Poph. 96.

Concerning the Power of Juſtices of Peace to bail.

t is further obſerved, That before the . of *Rich.* 3. Juſtices of Peace might bail h as were indicted before them: But that ute gave them Power to bail before In- tment. *Stamf.* 75. or elſe appealed before m; becauſe before Indictment or Appeal y were no Judges of the Perſon, or Cauſe mpriſonment, for being of Record, they ght to proceed upon what is judicially be- e them upon Record; and 'tis thought, would have been abſurd that they ſhould ver one to Bail, when they were no ges of him, or the Cauſe of his Impri- ment. *Coke's* Treatiſe of Bail, *cap.* 6.

But where Juſtices of Peace may now l, ſee that Treatiſe, becauſe it ſeems to deſign'd particularly for their Uſe.

Lord *Coke's* Treatiſe of Bail.

See alſo the Statute 1 & 2 *P.* & *M. cap.* 13. w ſuch as are arreſted for Manſlaughter, y be bailed by the Juſtices of Peace. *Et e* 4 *Inſt.* 278.

1 & 2 *P.* & *M.* Manſlaughter.

See

Juſt. of Peace binding to good Behaviour, *&c.*

See *Pulton de Pac. Reg. Fol.* 18, *&c.* co cerning Juſtices of Peace binding Perſons their good Behaviour, and taking Sure of the Peace. See alſo *Dalton*'s Juſtice,

Bailing for Felony by Juſt. of Peace.

That the Statutes that give Power to ſtices of the Peace to bail in caſe of Felo are 3 *H.* 7. *c.* 3. 1 *&* 2 *Ph. & M. cap.* Upon which there are two Kinds of B ments, for which *vide Hale Pl. C.* 105. ſee after the *Habeas Corpus* Act.

2 Kinds.

And note, That in *Hale*'s *Pl. Coron.* th is much ſaid concerning Bail; as what i the Difference betwixt Bail and Mainpri as before obſerved; in what Caſes, and whom to be taken. *Id.* 96.

Refuſing Bail.

Concerning the Fine and Puniſhment ſuch Officers as refuſe Bail, where the Pa ought to be bailed, and admitting Bail wh it ought not. *Id.* 97.

Stat. *Weſt.* 1. *cap.* 15.

That at Common Law, Bail was in Caſes but *Homicide*; but that now the S tute of *Weſtm.* 1. *cap.* 15. directs in wh Caſes bailable, and what not. *Ibid.*

Offences below Felony.

That in all Offences below Felony, the P ty accuſed is bailable, unleſs ouſted by t Statute or ſome other Statute, or unleſs Ju ment be given. *Id.* 98.

Felony not bailable.

That the Caſes of Felony wherein t Parties are not bailable, are either in reſp of the Hainouſneſs of the Offence,

Great Offences.

1. As in Charge of Treaſon againſt King's Perſon;

Counterfeiting the Seal;

Falſifying Money:

Arſon, or Burning Houſes: Or, In a Charge of *Homicide*. Vide *Dalton's cap.* 114. where it appears the *King's* may bail in Murder, (but in Diſcre- do not) for the Statute of *Weſtm.* 1. nds not to that Court. *Hale Pl. C.* 99. — Power of *B. R.*

it be a *Non Liquet*, that he is the Perſon, he Charge but Manſlaughter, it ſeems uſtices of Peace may bail. *Ibid.* — Upon a *Non liquet, &c.*

here by Stat. of *Weſtm* 1. *cap.* 15. the ſſaries before or after any Offence are ble, and where not. *Id.* 100. *& St. P. C.* 18. — Acceſſaries.

at as Bail is ouſted in ſome Caſes, in ct of the Greatneſs and Conſequence of Offence charged; ſo it is in reſpect of Notoriety of the Offence: For Bail is n *Stat indifferenter*, whether the Party be y or not; but when that Indifferency is ved, the Offender is not bailable. *Hale* 100, 101. *Weſtm.* 1. *cap.* 15. *Dalt.* 14. — Bail where *ſtat indifferenter, &c.*

e that is taken for a light Suſpicion, is ble; but if the Preſumption be ſtrong, e Defamation great, the Juſtices may e to bail him. This lies in Diſcretion. *l. C.* 102. — Light Suſpicion, *&c.* — Bail at Diſcretion.

here thoſe that are appealed by Provers, or may not be bailed, and by whom. — Appeals by Provers.

at in Appeals of Death, the Court in retion admit not the Defendant to bail, upon weighty Cauſe. *S. P. C.* 18. — Of Death at Diſcretion.

nd by 3 *H.* 7. *c.* 1. If the Party be ac- ted within the Year upon Indictment, he ot to be diſcharged, but remanded or d at Diſcretion, that an Appeal may be ecuted againſt him. — Party acquitted to be remanded.

But

Writ of Mainprize.

But by Stat. 28 *E.* 3. *cap.* 9. several quests that uſed to be before the Sheriff, taken away, and conſequently the Wri Mainprize. *Vide* Hale P. C. 103, 104, &

The Subſtance of the Habeas Corpus 31 Car. 2. cap. 2. *with Obſervati thereon.*

Bail by the *Habeas Corpus.* Act.

It is enacted, Such Perſons as are deta for any Crime, unleſs Felony or Tre plainly expreſſed in the Commitment, ing by *Habeas Corpus*, according to that in Vacation Time, brought before the L Keeper or any Judge, ſhall be diſcharge on their Entry into a Recognizance one or more Sureties for their Appear in the *King's-Bench* the next Term, or a next Aſſize or Seſſions for the Place w the Commitment was, or where the Of was committed, or properly cognizable leſs detained by legal Proceſs, Orde Warrant out of ſome Court, or by Wa under the Hand and Seal of ſome o Judges, or Juſtices of Peace for Matte Law not bailable.

Trial for High Treaſon upon a Petition, when.

And by the ſaid Act, ſuch Perſons committed for High-Treaſon or F plainly expreſs'd in the Commitment on their Prayer or Petition in open the firſt Week of the Term, or firſt D the Seſſions of *Oyer* and *Terminer*, or Delivery, to be brought to Trial; if not cted the next Term, Seſſions of *Oyer* an

Bail for want of Proceeding.

miner, or Gaol-Delivery after ſuch mitment, upon Motion by themſelves,

their Behalf, the last Day of the Term, ons, or Gaol-Delivery, shall be bailed, ess it appear upon Oath, that the Wit- es for the King, could not be produced Term, Sessions, or Gaol-Delivery; and not indicted and tried the second Term, Discharge. ions of *Oyer* and *Terminer*, or Gaol-Deli- y, they shall be discharged.

And because many Persons charged with Of Persons t-Treason, or Felony, or as Accessaries committed reto, are committed upon Suspicion on- upon Suspi- and bailable or not, according to the cion. cumstances, making the Suspicion more ess, which are best known to the Justices By the Just. he Peace that committed them, they shall of Peace. be removed or bailed by this Act.

If the Lord Chancellor, or any of the Forfeiture of ges aforesaid, shall in the Vacation-time, Officers de- n View of the Copy of the Commit- nying *Habeas* nt, or Oath made that such Copy was *Corpus*. ied, deny a Writ of *Habeas Corpus*, he ll forfeit to the Prisoner, or Party grieved, 0 *l. Sect.* 10. Sheriff or Officer neglecting refusing to obey the Writ, or to deliver a Or a true e Copy of the Commitment within six Copy of the urs after Demand, shall forfeit to the Pri- Commit- er for the first Offence 100 *l.* for the se- ment. nd Offence 200 *l.* and lose his Office, *Sect.* (unless the Commitment be for Felony Treason plainly and specially express'd in e Warrant of Commitment.)

By *Stat.* 1 *W. & M. Sess.* 2. *c.* 2. it is de- Where ex- red and enacted (*inter alia*) *That excessive* cessive Bail, *ail ought not to be required, nor excessive Fines* &c. ought *posed, nor cruel and unjust Punishments in-* not to be. *cted; and that all Grants and Promises of*

Fines

Fines and Forfeitures of particular Persons bef Conviction are illegal, and void.

Bar.

Vide *Auterfoits Acquit*, &c.

Clergy upon Indict. of Manslaughter, *&c.*

WHERE a Man is convict upon an I dictment of Manslaughter, and ha had his Clergy; this is a Bar to an App after brought, though it be of Murder, f the Fact is the same. *Hale Pl. C.* 247. *Vi* 4 *Rep.* 45. Wiggs *Case See* Plea.

Baron.

Vide *Peer.*

Where a Baron is a Witness.

A Baron of the Realm being a Witness, i covered after his Evidence is over: S also where he hath been a Party in Tre son, if he hath his Pardon. *Hamb. Try.* 17.

Evidence against the Honour of a Peer.

Evidence against the Honour of a Peer the Realm who gives Evidence for the Kin thereby to render him incredible, as to ma him an Atheist, *&c.* not admitted. *Ham Try.* 37, 38. *Et Vide Tit.* Trial, *&c.*

Barretors.

Vide *Forgery*, *Perjury*, &c.

A Barretor, in the Common Law, signifieth a Common Wrangler that setth Men at Difference, and is himself never iet, but at Brawl or Contention with one other. *Vide* Cow. Interp. *Verb.* Barretor. Barretor, what.

By 8 *Co.* 36. a Common Barretor, is a mmon Mover and Exciter, or Maintainer Suits, Quarrels, or Parties, either in urts whether of Record or not, or in *Pais*, Disturbance of the Peace, by taking and aining Possessions of Houses, *&c.* Goods, in Controversy, by Force, Subtilty, or ud, and often in Suppression of Truth l Right, and by false Inventions, and sow- of Calumnies, Rumours, and Reports, by ich Dissention and Disquiet arises amongst ighbours. *Aliter.*

By *Stat.* 1 *Ed.* 3. *cap.* 16. Conservators of Peace who are not Barretors, shall be gned in every County. 1 *Ed.* 3 *cap.* 16.

And by 34 *Ed.* 3. *cap.* 1 Justices of Peace ll have Power to restrain the Offenders, otors, and all other Barretors; and they e Power by Authority, without any spel Commission of *Oyer* and *Terminer*. Cro. 32. *Yelv.* 46. *Sed vide* 2 Rol. Rep. 151. 34 *Ed.* 3. *cap.* 1.

For Indictments of Barretry, *vide* 2 Rol. r. 79. Let. *K.* 82. *Pl.* 5, 6. Indictments of Barretry.

Et vide West's Precedents, 225 226 [illegible], [illegible]. 2 *Cro* 527.

Et vide Officium Clerici Pacis, Barretry.

Not for prosecuting a great Number of his own proper Suits.

If a Man profecutes an infinite Numb of Suits, which are his own proper Suits, gainſt others, yet he ſhall not be a Barret by this; for if they are falſe, the Defenda ſhall have Coſts againſt him, and if ſu Perſon ſhall be a Barretor, then he that ſu for Cauſe may be comprehended; but that ſtirs up Suits among his Neighbours, a Barretor. *Mich.* 11. *Jac. B. R. Somes C per Cur. Vide* 1 *Rol. Abr.* 355. *Let. A. Pl.*

Aliter where he deſigns to ruin his Neighbours.

But if a Man deſigns not the Recov of his own Right, but meerly to ruin a oppreſs his Neighbours, it is Barretry, 3 *Mod. Rep.* 98. But it ſeems this muſt be many Caſes, and more than once or twi ſo that he may be proved a Common Bar tor. 8 *Co.* 37. *b.*

Common and unlawful Solicitor.

And it was formerly held by *Coke* Ch Juſtice, and the Lord Chancellor, *Trin. Jac. in Camera Stellata, int.* Oliver & Branc flower, That a Common Solicitor who licits Suits, is a Common Barretor, and may indicted thereof; but this ſeems to be me of ſuch, who upon their own Preſumpti without Allowance of the Courts, take on them to ſolicit Suits, *&c.*

Againſt a Barriſter at Law.

Vide 3 *Mod. Rep.* 97. where it's ſaid, T if *A.* brings an Action againſt *B.* for 400 (whereas in truth *A.* owes *B.* 200 *l.* and owes *A.* nothing) and thereupon *B.* brought before a Judge to give Bail to Action, and *C.* who is a Barriſter at Law, there preſent, ſoliciting this Suit for *A.* T

Maintenance in C. but not Barretry, unleſs C. knew that *A.* had no Cauſe of Action; but it appearing upon Evidence that C. did intertain *A.* in his Houſe, and brought ſeveral Actions in his Name where nothing was due, C. was found guilty of Barretry.

Baſtard and Baſtardy.

Feme diſagrees, and Baron marries another.

WHERE a *Feme* at 11 Years of Age diſagrees to the Marriage, and the Baron marries another, and hath Iſſue by her; this is a Baſtard. *Vide* 1 *Rol. Abr. fo.* 341. *l.* 14. *Sed Quære.*

Poſthumus.

Concerning a Child born after the Death of the Father, *poſt ultimum tempus Mulieribus inſtitutum.* Id. 356. *Pl.* 1, 2, 3, *&c.*

Baſtard *Eigne*, &c.

For Baſtard *Eigne*, and *Mulier puiſne*, and the Learning thereof. *Vide* 1 *Rol. Abr.* 624. letters *D.* and *C.*

De Ventre inſpiciendo.

Concerning the Proceedings upon a Writ *de Ventre inſpiciendo*: *In Briton, fol.* 166. the Manner is ſhewn.

Jury of Women impannelled to view, *&c.*

How a Jury of Women ſhall be impannelled by the Sheriff after the Death of the Husband, upon the Complaint of the next Heir, and the *Feme* ſhall be viewed by them, and after ſhall be put in one of the King's Caſtles to be kept from Company; and if ſhe hath not a Child within 40 Weeks after the Death of her Husband, or if ſhe be not found *Enſeint*, ſhe ſhall be puniſhed by Fine and Impriſonment, and the Lords of the Fee, as ſoon as may be, without Delay, may take the Homage of the Heirs; and if ſhe hath a Child within the 40 Weeks, then the In-

fant is to be received to the Inheritance, if another Heir cannot aver this Child to be by another than her Husband, where, *&c. Vide* 1 *Rol. Abr.* 357. *Pl.* 4.

Proceedings therein. For the Writ *de Ventre inſpiciendo*, and the Proceedings therein, *vide Reg. Orig.* 227. *a. Co. Lit.* 8. *b.* Dame *Wilioughby's* Caſe. *Moor* 523. *Pl.* 692. *Cro. Eliz.* 566. Theaker's Caſe, *Cro. Jac.* 685. *Winch.* 71.

The Suggeſtion in *Canc.* Proceſs. That the Suggeſtion of the Heir is to be in Chancery. *Moor* 523. Upon the firſt Writ, the Sheriff having return'd in *B.* that ſhe was with Child, *&c.* a Writ iſſued thence, commanding him to keep her in a Houſe, *&c. Cro. Eliz.* 566. But where married again, the Court would not grant ſuch ſecond Writ to remove her from her Husband,

Recognizance given. but left her with him, he entring into a Recognizance, That ſhe ſhould not be removed from the Houſe where they then inhabited, and that one or two of the Women return'd by the Sheriffs, ſhould ſee her every Day, *&c.* Cro. Jac. 686. *Winch* 71.

Baſtard, who. Who ſhall be ſaid to be a Baſtard. *Vide* 1 *Rol. Abr.* 357. *Let.* A.

Mulier, what. Who ſhall be ſaid a Baſtard, and who a *Mulier. Idem. fo.* 358. *Let.* B. Mulier, *id eſt melior, ſive melieur*, and ſignifieth lawful Iſſue. *Cow. Interp. verb.* Mulier.

Nullius Filius. That a Baſtard is *nullius Filius*, neither of Father nor Mother. *Id.* 359. C.

Diſtinctions by Common Law and Civil. *Baſtard* by our Law, and *Mulier* by the Civil. *Id.* 359. *Let.* D.

Baſtard by the Spiritual Law, and *Mulier* by our Law. *Ibid. Let.* E.

If

If a Man who hath a Wife, takes another Wife, and hath Iſſue by her; this Iſſue is a Baſtard by both Laws, for the ſecond Marriage is void. *Id.* 360. *Let.* F. — Baſtard by both Laws.

What Divorce baſtards the Iſſue. *Id.* 360. *Let.* G. — What Divorce baſtards the Iſſue.

At what Time the Divorce being made ſhall baſtard the Iſſue. *Ibid. Let.* H.

For the Trial of Baſtardy, *vide* 2 *Rol. Abr.* 36. and the Notes there.

How it ſhall be tried, &c. — Trial of Baſtardy.

That Baſtardy ought to be tried by the Biſhop, and not *per Pais*. Id. 361. *Let.* K. pl. 1. — By the Biſhop.

That the Ordinary cannot try Baſtardy without a Command by the King's Writ on a Suit in a Temporal Court. *Id. Pl.* 2. *Pl.* 3. — With Command.

When Iſſue is joined upon Baſtardy, before it ſhall be awarded to the Ordinary to be tried, Proclamation ſhall be made thereof in the ſame Court, and after the Iſſue ſhall be certified into Chancery, where Proclamation ſhall be made once in every Month for 3 Months, and after the Chancellor ſhall teſtify it to the Court where the Plea is depending, and after it ſhall be proclaimed again in the ſame Court, that all thoſe whom this Plea doth concern, ſhould go to the Ordinary to make their Allegations. 10 *Hen.* 6. pl. 11. — Proclamations to be made, *in Cur.* — *Et in Canc.* — Again *in Cur.*

That if the Biſhop certifies Baſtardy, unleſs this comes in at the Motion of the Parties, it is nothing to the Purpoſe. *Ibid. Pl.* 4. — At the Parties Motion.

In what Actions.

In perſonal Actions, as well as real.

Baſtardy may be tried by the Biſhop in an Action of Treſpaſs or other perſonal Action, as well as in real Actions. 1 *Rol. Abr. Let.* L. *Pl.* 1. 2 *Rol. Abr. Pl.* 30, 31. So in an Aſſize, as well as in a *precipe quod reddat*, or other Writ in the Right. *Ibid. Pl.* 2. Baſtardy

Certificate under Seal.

ought to be certified under the Seal of the Ordinary, for it is not ſufficient to be certified under the Seal of the Commiſſary. *Ibid. Pl.* 3. *&* 2 *Rol. Abr.* 588. *Let.* U.

Party perpetually bound.

If a Man be certified a Baſtard by the Ordinary in a perſonal Action, he ſhall be bound perpetually, as well as in Actions real. *Id.* 362. *Let.* M. *Pl.* 6.

Aliter, if certified *Mulier.*

But if a Man be certified a *Mulier* by the Ordinary, in an Action between himſelf and *J. S.* this ſhall not bind Strangers thereto, but they may ſay, That he is a Baſtard. *Ibid. Pl.* 7.

Not binding before Judgment.

If a Man be certified a Baſtard by the Ordinary, yet this ſhall not bind before Judgment given thereupon, in an Action between him and the other. *Id. Let.* N. *Pl.* 1.

Plaintiff nonſuited.

And if the Defendant be certified a Baſtard by the Ordinary, yet the Certificate will loſe its Force, if the Plaintiff be after nonſuit, for then the Certificate is not of Record. *Ibid. Pl.* 2.

Death of Tenant.

But if after Certificate of Baſtardy in the Tenant, if the Tenant dies, by which the Writ abates, yet the Certificate ſhall ſtand in Force.

Vi

Vide 1 *Rol. Abr.* 271. *Let.* F. *Pl.* 4. In an Aſſize, if the Tenant pleads as Daughter and Heir to *J. S.* and that the Plaintiff is a Baſtard, and ſo not Heir; upon which they are at Iſſue, and he is certified a *Mulier*, the Aſſize ſhall not be awarded at large, but only of Right of the Dammages. In Aſſize. Certificate.

So in an Aſſize of *Mort d' Anceſtor*, if the Tenant alledges Baſtardy in the Demandant, and he is certified by the Biſhop to be a *Mulier*, the Aſſize ſhall not be taken at large, but only in the Right of Dammages. *Id.* 272. *Let.* G. pl. 2. *Mort d' Anceſtor.* Certificate.

Idem, fo. 277. *Let.* O. *Pl.* 11. In an Aſſize againſt *Baron* and *Feme*, the *Feme* being within Age, if the Defendant by way of Bar pleads, that *J.* was ſeized, and the *Feme* is Heir to him; if the Plaintiff ſays that the *Feme* is a Baſtard, this ſhall not be tried by the Ordinary, but by the Aſſize, becauſe the Circumſtances are to be inquired, and becauſe the *Feme* is not compellable to take Iſſue upon a certain Point. Trial by the Aſſize.

Vide 2 *Part*, Doct. & Student, *cap.* 5. If between Strangers, another be tried a Baſtard *per Pais*; this will not bind him that was ſo tried, becauſe he is a Stranger to the Trial, and cannot have an Attaint: *Aliter* it is of him that is privy, and may have an Attaint. *Vide* 1 *Rol. Abr.* 362. *Let.* M. *Pl.* 2, 3. Trial *per Pais*, between Strangers.

Vide. For Baſtardy pleaded in Bar, ſee *Raſt. Ent.* 29, 105, 273, 279, 282, 283, 314, 315, 338. *Reg. Orig.* 216, 218. & *Breve agard. Epiſcopo.* Bar.

Simile. *ſſ.* Baſtardy ſpecially pleaded. *Moil's Preſ. of Writs* 127.

Simile. *ſſ. Simile*, and Iſſue thereupon to be tried *per Pais. Vet. Intract.* 174. *Hern's Preſ.* 550.

Inquiſition. *ſſ.* An Inquiſition out of the Exchequer if *A.* was a Baſtard, and of what Lands he died ſeized, and the Return thereof. *Co. Ent.* 405.

Proclamations. *ſſ.* The Chief Juſtice's Letter to the Lord Chancellor, to make three Proclamations in Chancery concerning Baſtardy. *Raſt. Ent.* 280. *Vet. Intr.* 89. *Vide Theſ. Brev.* 15.

Simile. *ſſ.* A Writ to the ſame Purpoſe, and Continuance thereof. *Raſt. Ent.* 29, 289, 314, 315, *&c.*

Certificatio è Canc. *ſſ.* The Chancellor's Certificate, and thereupon another Proclamation made *in Banco*, and a Writ awarded to the Biſhop. *Raſt. Ent.* 105, 279, 282, 289, 682. *Hern* 469. *Theſ. Brev.* 14. A like Writ to the Biſhop. *Raſt.* 105, 280, 282.

Certificatio Epiſ. *ſſ.* The Biſhop's Certificate that he is a Baſtard. *Raſt. Ent.* 29, 105, 280, &c. *Hern* 469. *Aſt.* 351.

Verdict *ſſ.* Verdict that *J.* was a Baſtard. *Raſt. Ent.* 677.

Baſtard Child.

Vide Appeal.

Where the Concealment of the Death of a Baſtard-Child will be Evidence of Murder, and how the Indictment ought to be. *Kelings Rep.* 32.

Vide 3 *Lev. Rep.* 410. Where the Proof of Baſtardy was admitted againſt the King's Patent

ent, and an Act of Parliament which ed him Son and Heir.

Battery.

A Man beaten in *Weſtminſter-Hall*, may not ſtrike again; if there be Battery d Wounding, Pardon of the Battery ex-ds to the Wounding. 1 *Lev. Rep.* 107. *Vide Pult. de Pace Reg. fo.* 1. *&c.* Of Me-ces, Aſſaults, Batteries, *&c.*

Bills of Exception.

T it was reſolved, That the Statute of *W.* 2. *cap.* 31. which giveth the Bill of eption, extends only to Civil Cauſes, not to Criminal; for the Intention ne-was to give ſuch Perſons Liberty to put Bills of Exception, for then there would no Trials of that Nature ever diſpatched any Time, neither here nor in the Cir-s, if every frivolous Exception which a ſoner would make, ſhould be drawn up Bill of Exception: Beſides, the Court is ays ſo far of Council with the Priſoner, o ſee that he hath Right, and if they any Thing doubtful, they of themſelves take Time to adviſe. *Vide Kel. Rep.* 15.

Breach of the Peace. Vide Affray.
Breach of Priſon. Vide Priſon-Breaking.

Brokers.

Brokers.

Vide Burglary, *&* *Tit.* Goods, *&c.* *Vid*
Stat. 1 Jac. *cap.* 21.

THAT Brokers, as they are now uſed fo
taking to Pawn, or buying of Apparel
Bedding, Plate, Jewels, *&c.* is an unlawfu
Trade, and enacted, That no Sale to ſuch
Perſons in *London*, *Weſtminſter*, *Southwark*, o
within two Miles thereof, alters any Proper
ty; and if they refuſe to ſhew any ſuch
Goods ſo pawned or ſold, they forfeit doubl
the Value; and ſo there is a Differenc
between the ancient Brokers and theſe ne
Brokers: So that by the Statute, if any ſtole
Goods be bought by them, the Party ma
have his Action againſt them for the Good
whether he proſecutes the Felon or not, fo
the Property remains to the Owner, notwith
ſtanding ſuch Sale. See *Kelings Rep.* 50.

Alſo ſee *Tit.* Clergy, and Stat. 3 *&* 4 *W*
& *M.* where 'tis enacted, That Perſons bu
ing or receiving ſtolen Goods, knowin
them to be ſtolen, ſhall be deemed Acceſſ
ries to the Felony after the Fact.

Vide Burglary.

Alſo note, That every Perſon who ſha
act as a Broker, or imploy any under hi
to act as ſuch in the City of *London*, no
being admitted according to Stat. 6 *An.* *c.* 1
ſha

l forfeit to the ſaid City for every ſuch ence 25 *l. &c.* See the Statute.

Burglary.

Vide Clergy. Felony, Indictment.

Urglary, by the Common Law, is where a Perſon in the Night-time breaketh entreth into the Manſion-Houſe of ano-r, to the Intent to commit ſome Felony hin the ſame, whether the felonious In-t be executed or not. *Hale Pl. Co.* 79. — Burglary what, in the Night. — Intention.

That ſome have accounted it Night after n-ſet, and before Sun-riſing; but it ſeems, t ſo long as the Countenance of a Perſon y be diſcern'd, it is Day. *Ibid.* — What Time.

What is accounted in Law a Breaking and ring into the Houſe; and as there muſt a Breaking, ſo there muſt be an Entring. 80. And in ſome Caſes, Burglary without ual Breaking. *Ibid.* — Houſe breaking.

What ſhall be accounted a Manſion-Houſe hin the Law. *Ibid.* 82. as a Church, Out-lding, Barns, Stables, *&c.* — Manſion-Houſe.

And what ſhall be accounted an Intent to mmit ſome Felony. *Id.* 83. — Intention.

How the Indictment runs in Burglary, d that by Stat. 18 *El. c.* 6. Clergy is taken ay in all Burglary. *Id.* 84. — Indictment. Clergy.

Where breaking a Houſe in the Night, h an Intent to raviſh the Man's Wife, ich is Felony, was adjudged Burglary. *l. Rep.* 30. — Intent to raviſh.

So

To steal Goods.

So it was adjudged Burglary, if a Perſo in the Night-time break a Houſe and ſte Goods, though no Perſon be in the Houſ *Id.* 67. So if a Man hath two Houſes, o in the City and another in the Countr and while he is in the one Houſe, the othe is broken open, no Body being in it an Goods ſtolen. *Ibid.*

Though no Body therein.

Servants evil Intent to his Maſter.

If a Servant in the Houſe, lodging in Room remote from his Maſter, in the Nigh time draweth the Latch of a Door to com into his Maſter's Chamber with an Intent t kill him; this on a ſpecial Verdict was agre by all the Judges to be Burglary. *Id.* 6 *Hale Pl. C.* 82.

Part of a Houſe ſevered.

Concerning the ſevering Part of a Dwe ling Houſe by Leaſe or Contract, which broken, ruled not Burglary. *Hale Pl. C.* 8 See after.

Where but one Out-door both for Inmate and Owner.

Vide Keling's Rep. 84. That where this but one Out-door at which the Owner an Inmate enter, that it remaineth to be all th Dwelling-Houſe of the other; and that tho the Inmate hath an Intereſt againſt th Owner, that will not ſerve to make it th Dwelling-Houſe of the Inmate, but that th Indictment ought to be for Burglary, i breaking the Dwelling-Houſe of the Own er, and ſtealing the Goods of the Inmate.

Indictment how.

Cellar let to a Stranger, and the Door in the Street.

That if a Cellar which hath its going into it only out of the Street, and let to Stranger, be broke open, it ſeem'd to be no Burglary, becauſe it is ſeparated by the Con tract, and actually ſevered from the Houſe by excluding all Communication from the Houſe, no Paſſing being betwixt the Houſe and the Cellar. *Ibid.* So of a Shop ſevered by

Lease, the Party not lodging in it. *Ibid.* Rep.

If a Landlord in the Night break open the Rooms of his Inmates, and steal their Goods, this is Felony; but that letting of Lodgings to several Persons doth not make several Houses, if they all go in at the Door of him who lets the Lodgings, and so are all Inmates. *Ibid.* Landlord stealing his Inmates Goods.

Where some Rooms are severed, &c.

But that otherwise it is, if a Man sever some Rooms from his House, and make another Door to those Rooms, and so divide the House, that divided Part is the Mansion-House of him who hires it, and it is Burglary if it be broken open, and that it is Burglary to enter and steal, the House being open. *Id.* 70. But yet that it may be Burglary, though no actual Breaking, as pretending to speak with the Master, and a Servant opens the Door, and they get in and rob the House; this being in the Night-time, was adjudged Burglary *in fraudem Legis*, and the Persons hang'd. *Id.* 42, 43. Burglary, tho' the Servant open the Door to them.

P. 43. Concerning Robbers *in Fraudem Legis*, by Colour of lawful Pretences, as under Pretence of Hue and Cry; so Robbery or Burglary by Fraud, under Pretence of taking Lodgings, and their Intent was to rob, and they making use of such Entrance fraudulently obtain'd. *Id.* 63. Robbery or Burglary *in fraudem Legis.*

So Felony in a Carrier carrying Goods into another Place, and there opening of them, and disposing of them to his own Use. So in Carrier, of Goods delivered him to carry. Felony in a Carrier.

So

So where one pretends to buy a Horſe *Smithfield*, and under Pretence to try Paces, rides quite away with him. *Id.* 82.

Felony by Lodgers.

By 3 & 4 *W. & M. cap.* 9. If any Perſons ſhall ſteal any Chattels, *&c.* which Contract or Agreement they are to uſe, ſhall let them in Lodgings, ſuch Stealing ſhall be adjudged Larceny and Felony. Without Clergy.

Puniſhment of ſuch as ſteal Goods by Day or Night in Shops, *&c.* though not broke open, and though no other be therein.

Aſſiſtants.

By Statute 10 & 11 *W.* 3. *cap.* 23. Perſons, who by Night or Day ſhall in a Shop, Ware-houſe, Coach-houſe, or Stable privately and feloniouſly ſteal any Goods Wares, or Merchandizes, to the Value of 5 *s.* or more; though ſuch Shop, *&c.* not broke open, and though the Owner or any other Perſon be or be not in ſuch Shop, *&c.* or that ſhall aſſiſt in committing ſuch Offence; being thereof convicted by ſtanding mute, or challenging above 20 of the Jury, ſhall loſe the Benefit of Clergy.

Perſons having committed Burglary or Felony being out of Priſon, and making Diſcovery.

Pardoned.

By the ſaid Statute, ſuch as ſhall commit any Burglary, Houſe breaking, or Felony, not within the Benefit of Clergy, ſtealing Horſes, Money, Wares, or Goods and being out of Priſon, ſhall diſcover, cauſe to be diſcovered, two or more Perſons guilty of any ſuch Burglary, *&c.* and there of convicted, ſuch Diſcoverer ſhall have the King's Pardon for ſuch Burglaries, *&c.* committed before ſuch Diſcovery made. Alſo by this Act, Perſons convict of Theft or Larceny within the Benefit of Clergy, inſtead of being burnt in the Hand, were to be burnt in the Left Cheek; but this of the Burning is ſince altered by Stat. 5 *An. cap.* and to be as formerly.

Cheek burning.

The ſaid Statute gives a Certificate to the akers and Proſecutors of ſuch Felons, to diſcharged of all the Pariſh and Ward-ffices in the Pariſh or Ward where the Of-nce was committed, which Certificate may aſſigned over; alſo a Pardon to an Of-nder making Diſcovery. Benefit to the Takers and Proſecutors. Pardon.

And by Stat. 5 *Annæ, cap.* 31. enacted, That ery Perſon that ſhall take any one guilty Burglary, or felonious breaking and en-ing any Houſe in the Day-time, and pro-cutes them unto Conviction, ſhall receive ove the Reward given by 10 & 11 *W.* 3. *p.* 3. the Sum of 40 *l.* within one Month ter ſuch Conviction, to be paid by the heriff of the County where the Felony was one, without any Fee, upon tendring a rtificate under the Hand of the Judges fore whom the Conviction was, *&c.* 5 *An.* 31. Rewards to ſuch as take Perſons guilty of Burglary. 40 *l.* Certificate.

That in caſe any ſhall be kill'd by ſuch ouſe-breaker, endeavouring to apprehend m, then the Executors or Adminiſtrators, Perſon to whom the Right of Admini-ation ſhall belong, upon Certificate deli-red under the Hand and Seal of the Judge Aſſize of the County where the Fact was one, or the two next Juſtices of Peace, of the rſons being ſo kill'd, ſhall receive 40 *l.* om the Sheriff where the Fact was done, d upon Failure of Payment, double the *l.* to be recovered, with treble Coſts. *de* the Statute. Where the Perſon be kill'd. Where 40 l. double, and treble Coſts.

And if any Perſon ſhall commit ſuch rglary or Felony, and after diſcover Two o ſhall have committed ſuch Burglaries Felonies, ſo as they be convict, ſuch ſcoverer ſhall have 40 *l.* and the other To an Offender if diſcover t others.

Advantages

Pardon. (Exception.) Bar.

Advantages given to ſuch Taker or Proſecutor, and ſhall be entitled to a Pardon of all Burglaries and Felonies (except Murder and Treaſon) which ſhall be a Bar to an Appeal for the ſame. *Id.* Stat.

Perſons knowingly receiving, *&c.* ſtolen Goods. Felons.

And if any Perſon ſhall receive or buy knowingly any ſtolen Goods, or knowingly harbour or conceal Felons, he ſhall be taken as Acceſſary to the Felonies, and being convict, ſhall ſuffer Death as a Felon.

Offender Puniſhed by Fine, *&c.* exempts ſuch Offender.

And if the Principal Felon cannot be taken, ſo as to be convict, yet the Perſon buying or receiving knowingly may be proſecuted for a Miſdemeanor, to be puniſhed by Fine, *&c.* as the Court ſhall think fit, which ſhall exempt the Offender from being puniſhed as Acceſſary, if the Principal be after convict, *&c.* See before, Tit. Acceſſary.

Burning in the Cheeck:

Repeal thereof.

BY Stat. 5 *Annæ*, *c.* 6. ſo much of 10 *W.* *cap.* 23. as concerns the inflicting the Puniſhment of Burning in the Cheek, is repealed.

Burning of Houſes. Vide *Arſon.*

Et vide poſtea, *Houſe-Burning.*

Challen

C.

Carrier.

A Carrier robb'd of Goods deliver'd him for Carriage, may indict as for own Goods. *Kel. Rep.* 39. Carrier robb'd.

He may maintain an Action for the Rob- y of them. 2 *Sand.* 380.

If he steal part of the Goods, as to draw Part of a Tun of Wine deliver'd him to ry, 'tis Felony. *Kel.* 81, 82, 83, *&c.* Carrier steals Goods deli- vered.

t it seems, if he never carry it to the ce, but sell it and dispose of the whole, no Felony; at which Case the Repor- marvels, and adds, *I do not see why the posing of the Whole should not be Felony also.*

But after he has brought the Goods to Place appointed, the Contract it seems determin'd, and the Possession in the first yner; and then the taking All or Part is ony. *Id.* 83. Possession al- tered.

Certiorari.

A General Rule for Return of a *Certio- rari* to certifie any Indictment or Pre- tment, *&c. Show. Rep.* 336. General Rule.

Also wh re no *Certiorari* shall be allowed on Indictments, *&c.* See *Washington's* References.

Abridgment. *Deer-Stealers* 5. *Game* 6. *High-ways*, 22, 107, *&c.* See his Table, and see the Continuation of the Abridgment. *Game* 11.

Challenge.

Challenging a Juror for the King.

BY Stat. *de Inquisit.* 33 E. 1. If one *ex parte Regis*, challengeth a Juror for the King, he shall forthwith assign the Cause which shall be presently tried by the Discretion of the Justices, and if he alledge no a good Cause, or it go against him, the Inquest shall be forthwith taken. *Vide Hale Pl. C.* 259. That he is not compellable to shew the Cause till the Pannel be perused.

No peremptory Challenge in Treason.

By 33 *Hen.* 8. 23. Peremptory Challenges shall not be admitted for the Shire or Hundred, in Cases of High-Treason or Misprision of Treason. *Aliter* for want of Freehold. *Vide postea, & 1 And.* 107.

Statutes confirm'd.

And by 1 *Ed.* 6. 12. All Statutes made during the Reign of *Hen.* 8. touching Challenges and Foreign Pleas, are confirmed.

See the Tit. of Challenge in *Pulton de Pace*, 192, *&c.* Vide *Hale Pl. C.* 259. The Challenge *ex parte Prisonarii*, is either peremptory or upon Cause.

Where peremptory Challenge is allowable.

And that a peremptory Challenge is not allowable, but where the Life of a Prisoner comes in question, and therefore not upon collateral Issues.

Prisoner

Priſoners may challenge peremptorily in apital Caſes where his Life is concern'd, ut not in leſſer Offences. *Reading's* Trial.

Simile where the Life is concern'd.

Allowed for a good Cauſe of Challenge o one of the Petit-Jury, if he hath been on e Grand-Jury that found the Bill. *Oats's Trial* 1. *Vide poſtea.*

That the Petit-Juryman was on the Grand-Jury.

In Treaſon, the Priſoner accuſed may hallenge 35, and therefore there is a Reurn generally of 60 or 80, and when he as challenged as many as he pleaſe, the 12 len that ſtand next are to be of the Jury. ord *Ruſſel's* Trial 31.

Challenge of 35 in Treaſon.

At Common Law he might have chalnged peremptorily 35, that is, under 3 full ries; if he challenged above, he ſhould hanged: But by the Stat. 22 *H.* 8. *c.* 4. ade perpetual: By 32 *H.* 8. *c.* 3. it is reuced to 20; and if he challenge above , he ſhall not be therefore hang'd, but his hallenge ſhall be over-ruled, and put upon is Trial, yet *Quære Hale's P. C.* 259. But in ſe of Treaſon, or Petty-Treaſon, the Chalnge of 35 is reſtored by Stat. 1 & 2 *Ph. M.* 10. *Hale's P. C.* 260.

Peremptory Challenge at Common-Law.

One arraign'd for Felony, challeng'd 36, d all the Judges of the one Bench and of e other, agreed, That he ſhould be hang'd, d not preſs'd to Death; and this Rule ey would have all the Judges to obſerve their Circuits, notwithſtanding the Opion, *tempore* E. 4. to the contrary. *Kel.* ep. 35

A Felon challenging 36. hang'd, not preſſed to Death.

Reſolved by all the Judges, That upon a rial by Peers, the Priſoner cannot chal-

No Challenge upon a Trial by Peers.

lenge any of the Peers that are return'd on his Jury. *Id.* 54. in Margin. *Moo. Rep.* 621.

Challenge for Cauſe.

Challenge for Cauſe, were,

1. For Inſufficiencies.
2. Unindifferency.
3. In reference to an Alien and *Medietat. Linguæ. Vide Hale's Pl. Cor.* 260.

Vide Medietas Linguæ.

No Challenge to ſay, The Jurors have already given Verdict, and found others guilty.

It was reſolved, That if ſeveral Perſons be indicted together in one Indictment for one Crime, in caſe ſome of them be found guilty by one Jury, and afterwards ſome of the ſame Jury be return'd for Trial of others in the ſame Indictment, it is no Challenge for thoſe Priſoners to ſay, That thoſe Jurors have already given their Verdict, and found others guilty who were indicted in the ſame Indictment for the ſame Offence. *Kel. Rep.* 9.

Where ſeveral Priſoners are put upon one Jury, who challenge peremptorily, and ſever in their Challenges.

It was alſo reſolv'd, That if ſeveral Perſons be put upon one Jury, and they challenge peremptorily, and ſever in their Challenges, That then he who is challenged by one, is to be drawn againſt all, becauſe the Pannel being joint, one Juror cannot be drawn againſt one, and ſerve for another; but in ſuch Caſe it was agreed, That the Pannel might be ſevered, and that the ſame Jury may be return'd betwixt the King and every one of the Priſoners, and then they are to be tried ſeverally; and there the Challenge of one Priſoner is no Challenge to diſable the Juror ſo challenged againſt another Priſoner. *Id.* 9. *Vide Hale's Pl. Coron.* 256.

See Stat. 3 & 4 *W. & M.* for taking away Clergy from many Offenders, *&c. Et vide Tit.* Clergy. 3 & 4 *W. & M.*

By 1 *Ann. cap.* 9. If the Principal be convict of Felony, ſtand mute, or challenge peremptorily above 20 Jurors, the Acceſſary may be proceeded againſt, *&c.* And if ſuch Acceſſary convicted ſtands mute, or challenges as aforeſaid, he ſhall ſuffer as if the Principal had been attainted. Principal or Acceſſary Felon challenging above 20.

Vide Acceſſary.

So Captains and Mariners, convicted of deſtroying the Ships they belong to, ſtanding mute, or challenging above 20 Jurors, ſhall ſuffer Death without Benefit of Clergy. *Simile* of ſuch as deſtroy Ships.

The late Statute 4 & 5 *Ann.* to prevent Challenges to the Array, extends not to any Writ, Declaration, or Suit of Appeal of Felony or Murder, *&c.* See the Stat. 4 & 5 *Ann.* extends not to, *&c.*

Et vide poſtea Trial, Overt Act.

Et poſtea Treaſon, *per Stat.* 7 *W.* 3. *cap.* 3. If the Offender his ſtanding Mute, or refuſing to plead, or peremptorily challenging above 35 of the Jury. In Treaſon challenging above 35.

Vide Mute.
Vide Treaſon.

By the late Act, 7 *Ann.* for puniſhing Mutiny and Diſſertion, the Perſon guilty, being arraigned, ſtanding mute, or challenging above 20 of the Jury, ſhall ſuffer Death. Mutineers, *&c.* challenging above 20.

Champerty, Vide *Maintenance.*

Chancemedley. See *Felonies.*

Death *per Infortunium.*

THIS is where one Man is kill'd by another *per infortunium*, or involuntarily, in doing ſome lawful Act, without intent of Hurt; as by ſhooting at Rovers, or at a Bird, or hewing a Tree, and the Hatchet-Head flies off. *Ha. Pl. C.* 31.

So if by a School-Maſter, other Maſter, or a Father, giving Correction in a reaſonable manner. *Ibid.*

Unlawful Act.

But if the Act be unlawful, and then Death enſuing, it may be Manſlaughter or Murder. *Ibid.*

Shooting, *&c.*

So if by ſhooting at a Deer in another Park, the Arrow glanceth and killeth a Stander-by, this is Manſlaughter. *Ib.*

Throwing Stones.

So if Death happen by throwing Stones, or ſhooting in the High-way, this is Manſlaughter. *Id.* 32.

Aliter if purpoſely.

But if it happen by throwing a Stone over a Wall, knowing People paſſing by in the Street, this is ſaid to be Murder. *Ibid.*

Playing at Hand Sword.

Alſo playing at Hand-ſword without Command of the King, and Death happen, 'tis accounted Manſlaughter.

Difference of Murder and Manſlaughter.

So that it appears, that if Death happen by doing an unlawful Act without an ill Intent, 'tis Manſlaughter; and if with an ill Intent, it is Murder. *Ibid.*

Forfeiture of Goods.

Chancemedley cauſeth Forfeiture of Goods, but a Pardon of Courſe, upon the Special Matter found. *Ibid.*

Vide

Vide Kel. Rep. 67. where Manſlaughter is id to be in Law properly *Chancemedley*; hat is, where one Man upon a ſudden Oc- ſion kills another, without Malice in Fact, Malice Implied by Law. Where Manſlaughter, properly Chancemedley.

But there may be a Death *per infortunium*, ithout the Default or Procurement of a- other; as by falling from a Tree, or hap- ning by a Horſe or Cart: And there the hing which Occaſions the Death is forfeited a Deodand. *H. Pl. C.* 33. Death by falling from a Tree, *&c.*

What ſhall be forfeited as a Deodand.

If a Man fall from a Cart, or from a Ship Freſh-Water, it is a *Deodand*; otherwiſe in lt-Water. *H. Pl. Cor.* 33. Cart or Ship.

If an Infant under 14 Years be ſlain by fall from a Cart, Horſe or Mill, no *Deodand*; t if ſlain by a Horſe, Ox or Bull, then a *eodand. Ibid.* Horſe or Mill.

If a Man kill another with any Sword, a *eodand. Ibid.* Sword.

When forfeited, viz.

When found by Inquiſition, and there- re the Jury ought to find the Price, and is before the Coroner. *Ibid.* Price.

But the Relation of the Forfeiture, is to e Stroke. *Id.* 34. Relation.

Note, Theſe *Deodands* were formerly ſaid be given to God, and to be ſold and given the Poor, for an Expiation of the dread- ll Event, tho' effected by unreaſonable, a ſenſeleſs and dead Creatures. See *Cowel's terp. verb.* Deodand. And tho' this Deo- The Original of Deodands.

dand be given to God, yet are they forfei-ted to the King by Law, as God's Vicege-rent, *&c. Ibid.* Which Deodands are usually by the King's Charter granted over t Lords of Mannors, Corporations, *&c. Vi* Deodand.

A Man strangled upon Ringing of a Bel it seems the Bell not forfeited.

A Man ringing of a Bell, was strangl with the Rope; and upon an Informatio for the King, the Question was, Whethe the Bell should be a Deodand; and it wa objected *contra*, That the Bell was fix'd t the Free-hold; but the Answer was, tha it was only tied in the Steeple, and boun down with Pins or Keys, and might b removed without Alteration of the Fre hold. Then it was objected, That Bell are Parcels of the Goods of the Church and it would be in vain to forfeit them to the King, to be by Him again restored to the Church, *scil.* to pious Uses: T which it was said, That it should be for feited as a Satisfaction for the Blood, to b disposed by the King to other pious Use Two Judges were of Opinion, That the Be was forfeited; and other Two, on the con trary; and so no Judgment given. *Vi* 1 *Lev. Ent.* 136.

Clergy

Clergy.

Vide Challenge, Felony, Mute, *&c.*

CLERGY is said to be a Declinatory Plea of the Priſoner. *Hale Pl. C.* 228. Who ſhall have it, in what Caſes, at what Time, who the Judge, and what is the Conſequent. *Idem Ibid. &* 230, *&c.*

Where Clergy is allowable, it is to be allowed as well where the Party is convict by Confeſſion, as by Verdict, and where he ſtands mute. *Hale Pl. C.* 231.

Before we come to the latter Statutes, *viz.* relating to Clergy, it may be convenient to look into the Abridgment of the former Statutes for this purpoſe, from which it appears as followeth, *viz.*

Clergy allowed, or diſallowed by former Statutes.

I. *Weſt.* 1, 2. 3 *E.* 1. A Clerk convict for Felony and delivered to the Ordinary, ſhall not be enlarged without due Purgation.

Clerk Convict.

II. *Stat. De Bigamis* 5. 4 *E.* 1. *Bigamus* ſhall not be allowed Clergy.

Bigamus.

III. *Artic. Cleri*, 15. 9 *E.* 2. A Clerk flying into the Church for Felony, ſhall not be compelled to abjure.

Clerk flying, *&c.*

IV. *Artic. Cleri*, 16. 9 *E.* 2. The Privilege of the Church being demanded by the Ordinary, ſhall not be denied to a Clerk that hath confeſſed Felony, who is called an Appealor or Approver.

Clerk confeſſing Felony.

V. *Stat.*

Bigamus. V. *Stat.* 18 *E.* 3. *pro Clero*, 2. Bigamy shall not be tried by Inqueſt, but by Certificate from the Ordinary, until which Time the Party ſhall remain in Priſon, unleſs bailable.

Clerk convict. VI. *Stat.* 25 *E.* 3. *pro Clero*, 4. Every Clerk convicted of any Treaſon or Felony (not touching the King himſelf) ſhall be delivered to the Ordinary.

Clerk arraigned. VII. *Stat.* 25 *E.* 3. *pro Clero*, 5. A Clerk ſhall be arraigned of all his Offences at once.

Words rejected. VIII. *Stat.* 4 *H.* 4. 2. The Words *Inſidiatores viarum, & depopulatores agrorum*, ſhall not be put in Indictments or Appeals.

Clergy notwithſtanding. IX. Clerks ſhall be allowed their Clergy notwithſtanding an Indictment hath the Words aforeſaid inſerted in it.

Purgation. X. *Stat.* 4 *H.* 4. 3. A Clerk convict ſhall make Purgation according to a Conſtitution made by *Simon* Archbiſhop of *Canterbury*.

Clergy but once allowed. XI. *Stat.* 4 *H.* 7. 13. The Benefit of Clergy ſhall be allowed but once.

Marking of Perſon convict. XII. A convict Perſon ſhall be marked openly before the Judge upon the Brawn of his Left Thumb, *viz.* with an *M.* for Murder, and with a *T.* for another Felony.

Clerk ſhewing his Orders. XIII. He that is within Orders, upon asking of his Clergy ſhall ſhew his Orders or his Ordinary's Certificate.

Murder. XIV. *Stat.* 12 *H.* 7. 7. No Lay-perſon that doth murder his Lord or Maſter ſhall have his Clergy.

XV. *Stat.* 23 *H.* 8. 1. None (except Clerks within Orders) which by the Law ſhall be found guilty of Petty-Treaſon, Murder, Sacrilege, Burglary, Robbery, or Houſe-breaking, nor their Acceſſaries, ſhall be admitted to the Benefit of Clergy. — Petty-Treaſon, Murder, &c.

XVI. A Clerk within Orders, being Principal or Acceſſary to any of the Offences aforeſaid, ſhall not be admitted to his Purgation, nor be enlarged by the Ordinary, until he ſhall have bound himſelf with two good Sureties before two Juſtices (*Quorum*) to be of good Behaviour. — Clerk bound to good Behaviour.

XVII. This Act ſhall give no Benefit to Perſons which after Outlawry, or Attainder for Felony or Murder, are admitted to their Clergy, but that ſuch ſhall ſtill remain in the Cuſtody of the Ordinary without making Purgation. — After Clergy, to remain in Cuſtody.

XVIII. The Ordinary may degrade a Convict Perſon, and ſend him to the King's-Bench, where the Juſtices ſhall have Power to give Judgment upon him, according to which he ſhall be executed. — Degradation.

XIX. *Stat.* 23 *H.* 8. 11. A Convict Perſon within Orders ſhall be delivered to the Ordinary, there to remain without any Purgation; yet may the Ordinary (in that Caſe) degrade him, and ſend him to the King's *Bench*, where the Juſtices may proceed againſt him as before. — The like of one within Orders.

XX. *Stat.* 25 *H.* 8. 3. None ſhall have Benefit of Clergy, which, being accuſed of any of the Offences mentioned in the 23 *H.* 8. are found guilty and mute, challenge above twenty, or anſwer not directly, albeit — Standing mute, &c.

beit the Offence were committed in a
ther County than where they were tried

Wales. XXI. *Stat.* 26 *H.* 8. 12. A Remedy wh
there be no Juſtices of Peace in that Cou
in *Wales* where the Clerk convict doth
main in Priſon.

Thoſe in Orders. XXII. *Stat.* 28 *H.* 8. 1. Such as be wi
in Holy Orders ſhall receive no other
nefit of Clergy than others do. *Stat.* 3
8. 3.

Horſe-ſtealing. XXIII. *Stat.* 37 *H.* 8. 8. None attain
for Horſe-ſtealing ſhall have the Benefit
Clergy. See 2, 3 *E.* 6. 33.

Murder, *&c.* XXIV. *Stat.* 1 *E.* 6. 12. All Felons
have the Benefit of Clergy, ſave only ſ
as are found guilty of Murder, Poiſon
Burglary, Robbery, Horſe-ſtealing, or
crilege, or which upon their Arraignm
of any of the ſame Offences confeſs
ſame, ſtand mute, or make no direct
ſwer thereunto. *See alſo for* Horſe-ſteal
the Statute of 2 *&* 3 E. 6. 33.

Horſe-ſtealing. XXV. This Act ſhall not extend to T
ſon, Petty-Treaſon, or Miſpriſion of Treaſ

Peers. XXVI. A Peer of the Realm, for his
Offence of Felony, though he cannot r
ſhall be admitted to his Purgation as a C
convict.

Bigamus. XXVII. *Bigamus*, being a Felon, ſhall
admitted to his Clergy as well as any oth

Burglar. XXVIII. *Stat.* 5 *&* 6 *E.* 6. 9. Clergy
not be admitted to a Burglar, although
Offence be committed without the No
of the Owner, Children, or Servants,
any of them being within the Houſe or P
cincts of the ſame; ſo it is alſo for Burgl
committed in Booths or Tents.

XXI

XIX. *Stat.* 5 & 6 *E.* 6. 10. The Statute 2 *H* 8. 3. ſhall ſtand in Force concerning the Trial of Offenders in another County where the Offence was committed, notwithſtanding the Statute of 1 *E.* 6. 12. which ſeems to take away the Force thereof; that ſuch an Offender ſhall not have his Clergy, albeit the Trial happen to be in another County than that where ſuch Offence was committed. — Trial in another County.

XX. *Stat.* 4 & 5 *P.* & *M.* 4. Acceſſaries (before the Fact) which are found guilty of Petty-Treaſon, Murder, Burglary, Robbery or Houſe-burning, or which upon their Arraignment for theſe Offences ſtand mute, challenge above twenty, or anſwer not directly, ſhall not enjoy the Benefit of their Clergy. — Acceſſaries before the Fact.

XXI. In this Caſe, Peers ſhall be tried by their Peers. — Peers.

XXII. *Stat.* 8 *Eliz.* 4. None that taketh any Thing privily or feloniouſly from the Perſon of another, or upon his Arraignment ſhall confeſs the ſame, not anſwer directly, ſtand mute, challenge above twenty, or be outlawed for it, ſhall have the Benefit of his Clergy. — Taking away privily or feloniouſly.

XXIII. One delivered to the Ordinary, and admitted to his Clergy, ſhall (notwithſtanding his Purgation) anſwer for Offences formerly committed. — To anſwer former Offences.

XXIV. *Stat.* 18 *El.* 7. None ſhall have Clergy that committeth Rape or Burglary. — Rape.

XXV. An Offender admitted to his Clergy after burning in the Hand, ſhall not be delivered to the Ordinary, as hath been uſed, but ſhall thereupon be enlarged by the Juſtices — After Clergy-enlargement.

ſtices before whom ſuch Clergy ſhall granted, or by them detained longer in P ſon at their Diſcretion, ſo it be not for l ger Time than one whole Year.

Carnal Knowledge.

XXXVI. To know a Woman carnally u der the Age of ten Years, is Felony.

To anſwer over.

XXXVII. One admitted to his Cler ſhall nevertheleſs anſwer for other Felonie

Taking away a Woman.

XXXVIII. *Stat.* 39 *Eliz.* 9. He that tak away a Woman againſt her Will (havi Lands or Goods, or being Heir Apparent her Anceſtor) contrary to the *Stat.* of *H.* 7. 2. or being arraign'd for ſuch Offen ſtands mute, anſwers not directly, or th lengeth above twenty, ſhall not have the b nefit of Clergy.

Procurers, *&c.*

XXXIX. The ſame Law againſt Procur and Acceſſaries before ſuch Offences co mitted.

Felony to the Value of 5 *s.*

XL. *Stat.* 39 *Eliz.* 15. Clergy ſhall not allowed to any that feloniouſly takes aw any Thing in the Day-time, amounting the Value of 5 *s.* out of any Dwelling hou or Out-houſe, albeit no Perſon be with or near the ſame.

Stat. againſt Stabbing.

XLI. *Stat.* 1 *Jac.* 1. 8. He that ſtabs thruſts any Perſon, not having a Weap drawn, or not ſtriking firſt, ſo that he d thereof within ſix Months after, although be not of Malice or Fore-thought, ſhall n enjoy the Benefit of Clergy.

Se defendendo.

XLII. This Act ſhall not extend to cha any of ſtabbing or thruſting, when it is do only *ſe defendendo*, by Misfortune, or in c ſtiſing his Child or Servant, with no Purp to commit Manſlaughter.

XLI

XLIII. *Stat.* 21 *Jac.* 6. For Felony, where Man may have his Clergy, the Woman l be burned in the Hand with an hot n. — A Womans Punishment.

XLIV. *Stat.* 22 *Car.* 2. *cap.* 5. No Persons o shall be indicted for cutting and taking, ling or carrying away any Cloth or Wool- Manufactures from the Rack or Tenter in Night-time, or for any Offence against 31 *Eliz. cap.* 4. or shall feloniously l or imbezzel any of the King's Naval res to the Value of 20 *s.* and be found lty, or shall confess the same, or not an- r according to Law, or stand mute, or llenge peremptorily above 20, or be out- ed, shall have their Clergy. — Cutting and stealing Cloth from the Tenter.

XLV. But the Court may grant a Re- eve, and transport them to the King's ntations for 7 Years, and if the Offender use, or after return, *&c.* he shall be put Execution upon the Judgment. — Transportation.

None shall have the Benefit of Clergy ce, unless he be really in Orders. *Stat.* 7. *c.* 13. *H. P. C.* 239. — Not Clergy twice.

Ecclesiastical Persons being convict of nslaughter, and having their Clergy, shall be burnt in the Hand, *Propter Ordines*, . 288, 294. Neither shall a Baron of this lm, in the like Case, be burnt in the nd, *propter Honorem. Stat.* 1 *E.* 6. *c.* 12. 14. — Privilege to Ecclesiastical Persons.

The King may pardon burning in the nd after Conviction, and that as well in Appeal as upon an Indictment; and the ning being pardoned, he shall be deli- ed out of Prison of Consequence. *Co. Rep.* *fo.* 50. *Biggins Case.* — Pardon of Burning in the Hand.

Party shall be discharg'd immediately.

A Man discharged of Burning in the Hand shall be immediately discharged of his Imprisonment. *Co. ubi supr.* Yet the Justices if they see Cause, may detain the Party in Prison for some Time, not exceeding a Year. *Stat.* 18 *Eliz. c.* 7. *Sect.* 2, 3.

Reading *ut Clericus.*

The Court is Judge of the Prisoner's reading as a Clerk, and not the Ordinary. *Kel. Rep.* 28.

Ordinary fined.

Id. 51. The Ordinary was fined for saying the Prisoner did read when he could not, for endeavouring to abuse the Court.

Benefit of Clergy allowed, tho' a peremptory Plea be against the Party.

When a Prisoner is demanded what he can say why Judgment should not be given; the in such a Case he must at his peril plead such a Plea as he will stand to, for it is peremptory to him, if the Matter, *&c.* pleaded be adjudged against him. Yet after such Plea, he may and ought to have the Benefit of his Clergy. *Id.* 29.

Clergy is a total Discharge.

By Stat. 18 *Eliz.* 17. He who hath Clergy, is totally discharged. *Id.* 38. Margin.

No Deprivation after.

If a Clergyman be burnt in the Hand and after sued to be depriv'd for the Cause, Prohibition lies. *Ibid.*

Party ought not to be delayed.

The Court ought not to delay the Party having the Benefit of his Clergy; for it is his Right if he be capable of it. *Id.* *Hob.* 289.

How Laymen came Clergy.

Vide Kel. Rep. 99, 100, *&c.* How the Right of a Clerk to have his Clergy did commence, and how Laymen came to be intitled to it.

A Reader is immediately the Ordinary's Prisoner.

That as soon as ever a Man is recorded to have read, he is immediately the Ordinary's Prisoner, tho' remanded to the Gaol and the Temporal Court hath nothing more

do with him. *Id.* 104. *Stamf. Pl. Coron.*
2.

A Convict of Manſlaughter, may inſiſt have Clergy before he anſwers an Appeal. 107, 108. — Before Anſwer to an Appeal.

Clergy is ſuch a Privilege, of which no neral Words in an Act of Parliament ve been conſtrued to deprive an Offender. 104. — Privilege of Clergy.

But this Benefit of Clergy is ouſted by eral Statutes, as may appear before. Alſo ſee *Kel. Rep.* 31. 58, 70. What break- of a Houſe ouſts it: *And.* 67, 70. What bbing of Houſes ouſts it. — Clergy ouſted by ſeveral Statutes, *ut antea.*

And the Stat. of 3 & 4 *W.* & M. *cap.* 9. s made for taking away Clergy from ny Offenders, and to bring others to niſhments for Robbery and feloniouſly ing away Goods in a Dwelling-Houſe, erſon being therein, in the Day-time; breaking open Houſes, Shops, or Wareuſes in the Day-time, and taking away ods to the Value of 5 *s.* no Perſon be- therein, or counſelling, hiring, or nmanding any Perſon to commit any rglary, *&c.* if attainted, or ſtand mute, anſwering directly, challenging above *&c.* — 3 *&* 4 *W.* & *M.* takes away Clergy from many Offenders. — To the Value of 5 *s.* — Aiders in Burglary.

tealing Goods in one County, tho' taken any other, if convicted or ſtanding te, *&c.*

Perſons buying or receiving ſtolen Goods, owing them to be ſtolen, ſhall be deem- Acceſſaries to the Felony after the Fact. — Buying ſtolen Goods, *&c.*

Vide Burglary, *and Tit.* Goods.

Punishment of a Woman convicted.

By the same Statute, If a Woman be convicted of an Offence, for which a Man might have the Benefit of his Clergy; upon her Prayer to have the Benefit of this Statute Judgment of Death shall not be given against her, but she shall suffer the same Judgment that a Man should suffer, *viz.* shall be burnt in the Hand, and farther be kept in Prison not exceeding a Year.

Act continued.

This Act was continued by 4 & 5 *W. & M. cap.* 24. and made perpetual by 6 & 7 *W.* 3. *cap.* 14.

Woman totally excluded of Benefit.

By which Act for Continuation, it is enacted, That if any Woman hath been, or shall be convicted of any Felony, for which a Man might have the Benefit of Clergy, and hath once had or shall have the Benefit of an Act made 3 & 4 *W. & M. cap.* and shall again be convicted of any other Felony, such Woman shall be totally excluded from having any other Benefit of the said Act.

Persons destroying Ships.

By Stat. *primo Annæ Reginæ*, Persons belonging to Ships, and destroying the same to the Prejudice of the Owners, being thereof convict, standing mute, or challenging above 20 Jurors, shall suffer Death without Benefit of Clergy.

Deceitful Bankrupts.

By Stat. 4 & 5 *Ann. cap.* 17. If Bankrupts voluntarily surrendring themselves omit to discover and deliver their Estates, and do as this Act directs, such Persons shall be adjudged fraudulent Bankrupts, and dying convict, shall suffer as Felons without Benefit of Clergy.

Simile.

By 5 *Ann. cap.* 22. A Bankrupt removing, concealing, or imbezelling Monies or

fe

ts, *&c.* ſhall ſuffer as a Felon without nefit of Clergy, *&c.*

f a Perſon convicted of Theft or Larceny inſt Stat. 10 *W.* 3. *c.* 23, *&c.* for which ought to have the Benefit of the Cler- pray the Benefit according to 5 *Ann.* 6. he ſhall not be required to read, ſhall be puniſhed as a Clerk convict.

Reading not required.

---

pping Money, Counterfeiting Coin, &c.

Vide *Treaſon.*

Y *Stat.* 8 *&* 9 *W.* 3. *cap.* 26. *For pre- venting the Counterfeiting the Coin*, Smith, Engraver, Founder, or other on whatſoever (except ſuch as are em- 'd in his Majeſty's Mints, for the Uſe of ſaid Mints only, or Perſons lawfully au- iz'd by the Lord-Treaſurer) ſhall know- y make or mend any Punchion, Counter- chion, Matrix, Stamp, Dye, Pattern or d of Steel, Iron, Silver or other Metal, Spaud or fine Founders Earth or Sand, other Materials whatſoever, by which be made or impreſſed the Figure, Stamp, ſimilitude of both or either Side of any or Silver Coin current within this gdom; or make or mend any Edger, ument, or Engine, contrived for making Money round the Edges with Letters, nings, or other Marks, reſembling thoſe he Edges of Money coined in the King's ; nor any Preſs for Coinage, or Cut-

The Puniſhment of Perſons offending againſt this Stat. by making or mending, or beginning to make or mend, any Coining Tool or Inſtrument, *&c.* or by marking of Money round the Edges with Letters or Grainings, *&c.*

ting-Engine for cutting round Blanks, no knowingly buy, ſell, or hide, or without lawful Authority or Excuſe, have in his Houſe or Poſſeſſion any ſuch Tool or Inſtrument before-mentioned: And any Perſon whatſoever (except as before) who ſhall offend in any the Matters aforeſaid, every ſuch Offender, his Aiders and Abetters, ſhall be guilty of High-Treaſon.

High-Treaſon.

Conveying ſuch Inſtruments out of the Mint.

And if any Perſon ſhall, without lawful Authority, wittingly convey out of any of the King's Mints, any of the ſaid or other Inſtruments uſed about Coining of Money there, or any uſual Part of ſuch Inſtruments, ſuch Perſons ſo offending, their Aiders and Abetters, ſhall be guilty of High-Treaſon.

Marking on the Edges, &c.

If any Perſon, (other than ſuch as are imployed in the King's Mints, or who have Authority from the Lords of the Treaſury) ſhall mark on the Edges any the current Coin of this Kingdom, or any diminiſhed Coin of this Kingdom, or any Counterfeit Coin reſembling the Coin of this Kingdom, with Letters, Grainings, or other Marks, like thoſe on the Edges of Money coined at the King's Mint, every ſuch Offence ſhall be High-Treaſon, and the Offenders ſhall ſuffer accordingly.

Colouring, gilding, or waſhing, in Imitation of current Gold and Silver, &c.

If any Perſon ſhall colour, gild, or waſh over with Gold or Silver, or any Waſh or Materials producing the Colour of Gold or Silver, any Coin reſembling the current Coin of this Kingdom, or any round Blanks of Metal, or of coarſe Gold or Silver, of the Size of mill'd Money, or gilt over Silver Blanks to be coined into Pieces reſembling the current Gold Coin of this Kingdom, every

n Perſon, his Aider and Abetter, ſhall guilty of High-Treaſon. High-Treaſon.

any Perſon ſhall blanch Copper for , or mix blanch'd Copper with Silver, knowingly buy or ſell, or offer to ſell , or buy or ſell any malleable Compo- n of Mixture of Metals or Minerals, ch ſhall be heavier than Silver, and look wear like Standard Gold, but be manifeſt- orſe than Standard; or ſhall receive, pay, ut off any Counterfeit milled Money, or 'd Money unlawfully diminiſhed, and cut in Pieces, at a lower Rate than the e by its Denomination ſhall import, y ſuch Perſon ſhall be guilty of Felony, ſuffer Death as in caſe of Felony. Blanching Copper for Sale, or mixing blanch'd Copper to imitate Standard Gold, *&c.* Felony.

his Act ſhall not extend to make any ruption of Blood, or Loſs of Dower; all Perſons who ſhall be accuſed of ſon or Felony by this Act, ſhall be in ſuch manner as is uſed againſt Of- ers counterfeiting the King's Money. No Corruption of Blood, or Loſs of Power.

nd all and every the Crimes mention- n an Act, made 6 & 7 *W.* 3. intitu'led, *Act to prevent Counterfeiting and Clip- the Coin of this Kingdom*, may be heard determined upon Indictment or Pre- ment, either in the Court of *King*'s- , or before the Juſtices of Aſſize. 6 & 7 *W.* 3. To prevent counterfeiting and clipping Coin.

his Act to continue and be in force till End of the next Seſſion of Parliament, no longer; and no Proſecution ſhall ade upon this Act, unleſs commenced in three Months after the Offence mitted: Further continued, *per* 1 *Ann.* 9. till the 25th of *March* 1709, and from ce to the End of the firſt Seſſion of Proſecution within three Months. Continued.

And Profecution within 6 Months.

Parliament then next enſuing; and Months after the Offence are given, Proſecution of Perſons ſo offending.

Act for regulating Foreign Coins.

An Act was made, 6 *Ann. cap.* 30. for gulating and ſettling the Currency of reign Coins in her Majeſty's Colonies Plantations in *America*.

Commitment.

Vide Bail.

Oath before Commitment.

PEople apprehended upon Suſpicion Robbery, and had before a Juſ ought not to be committed without O *Lord Hollis Nar.* of the Tryal of 5 *French* 4. 38.

After Commitment not to be removed, unleſs, *&c.*

Subjects of this Realm committed for Crime, ſhall not be removed into Cuſ of any other Officer, unleſs by *Hab. Corp.* ſome other legal Writ in due Courſe of L or in caſe of Fire, Infection, or other ceſſity. *Stat.* 31 *Car.* 2. *c.* 2. *Sect.* 9.

Delivered upon *Hab. Corp.* not to be re-committed. Other than, *&c.*

No Perſon who ſhall be delivered or ſe large upon any *Hab. Corp.* ſhall be again committed for the ſame Offence by any ſon or Perſons whatſoever, other than the legal Order or Proceſs of ſuch C wherein he ſhall be bound by Recogniz to appear, or other Court having Jur ction of the Cauſe. *Stat.* 31. *Car.* 2. *Sect.* 6.

Not to be ſent into Foreign Parts.

No Subject inhabiting in this Realm, be ſent Priſoner into *Scotland*, *Ireland*, *Je* or any Foreign Parts, except Perſons con

ing to be tranſported, or Felons praying ranſportation. 31 *Car.* 2. *c.* 2. *Sect.* 12, 3, 14.

How Commitment ought to be by a Juſtice:

The Commitment by a Juſtice ought to e to the common Gaol, by *Stat.* 23 *H.* 8. *p.* 2. and the Mittimus ought to be under eal, to contain the Cauſe, and have an apt onclusion, *viz.* There to ſtay till deliver'd y Law; otherwiſe the Warrant is void. *Hale's Pl. Cor.* 94.

Party not to be diſcharg'd till indicted, &c:

And there it is noted, That a Perſon com- itted for Treaſon, Felony, or other Crime, annot be diſcharged till indicted and ac- uitted, or *Ignoramus* found, or diſcharged y Proclamation, or by the King's-Bench y *Habeas Corpus.*

Agreed, That a Commitment until fur- her Order of the Perſons committing, is ot good; but a Commitment until further rder generally, is good. 1 *Lev. Rep.* 230. Commitment until further Order.

No Action on the Caſe againſt a Judge, pon a wrongful Commitment. 1 *Mod. ep.* 184, &c. Judge.

Concealment of Felony.

Vide Miſpriſion.

Confeſſion.

Vide *Overt-Act.*

Perſons have ſometimes confeſſed themſelves guilty falſly.

PARTIES have ſometimes confeſs'd themſelves guilty falſly. The Caſe of *Hariſon* of *Campden* in *Glouceſterſhire*, who appeared alive many Years after three had been hanged for his Murder, one of which confeſs'd. Alſo the Truth of Witches Confeſſion againſt themſelves hath been often doubted; it ſeems therefore, that there ought to be good Circumſtances concurring.

After Not Guilty.

Confeſſion may be after Not Guilty pleaded. *Kel. Rep.* 11.

Where the Confeſſion of the Party before a Juſtice of Peace evidence againſt himſelf only.

If the Criminal on Examination before a Privy-Counſellor, or Juſtice of Peace confeſs the Treaſon; if this at his Trial be proved by two Witneſſes, ſuch Confeſſion is a good Evidence of it ſelf. *Id.* 18.

But ſuch Confeſſion ſo prov'd is only Evidence againſt the Party himſelf who made the Confeſſion, but cannot be made uſe of as Evidence againſt any others, whom on his Examination he confeſſed to be in the Treaſon. *Id.* & 19.

So before a Privy Counſellor.

And it was agreed, That ſuch a Confeſſion upon an Examination before a Privy Counſellor, tho' he be not a Juſtice of Peace

ice, is a Confeſſion within the Meaning the Statute. 1 & 2 *P. & M. cap.* 13.

---

njuration, Enchantment, and *Witchcraft.*

Invocation, or Conjuration.

Y Stat. 1 *Jac.* 1. 12. If any ſhall be con- victed to have uſed Invocation or Con- ation of any evil Spirit, or to have ſulred, covenanted with, entertained, ployed, fed or rewarded any ſuch Spi- or taken up any dead Perſon, or the n, Bone, or other Part thereof, to have d in Witchcraft, Sorcery, Charm, or En- ntment, or to have uſed any of the ſaid s, to kill, conſume, and lame any Per- ; they, together with their Acceſſaries ore the Fact, ſhall ſuffer as Felons with- Benefit of Clergy.

Witchcraft, Sorcery, *&c.*

Felony.

f any ſhall be convicted to have by thcraft, Sorcery, Charm, or Inchant- nt, undertaken to tell where any Trea- e or Goods loſt or ſtolen may be found are become, or to provoke any to un- ful Love, or to deſtroy or hurt any Cat- Goods or Perſon, albeit the ſame be effected; they ſhall for the firſt Offence er one Years Impriſonment without l, once every Quarter of that Year ſtand Hours upon the Pillory in ſome open r or Market, and there make open nfeſſion of the Offence committed; and the ſecond Offence ſhall ſuffer as Fe- s, without Benefit of Clergy.

Pretending, *&c.* to ſell off Goods loſt or ſtolen.

To procure Love, *&c.*

1ſt Offence.

2d Offence. Felony.

But

No Loſs of Dower, &c.

Peer.

But in theſe Caſes ſhall be no Loſs Dower, or Diſheriſon of Heir; and a Pe (being an Offender) ſhall be tried by Peers.

Conſpirators.

Vide Indictment.

Conſpiracy and Conſpirators, what.

THAT an Indictment lies for a b Conſpiring, without any Act do 1 *Lev. Rep.* 62. 124.

In what Caſe a Writ of Conſpiracy d lie. *Vide* Pult. *de Pace.* 245, &c.

By *Artic. ſuper Chart.* 10. 28 *E.* 1. Ag Conſpirators, falſe Informers, and Imbra of Inqueſts, the King hath provided a W in the Chancery.

By Stat. 33 *Ed.* 1. Conſpirators are ſ as bind themſelves by Oath, or other A ance, falſly and malicioufly to indict, falſly to move and maintain Pleas, &c. retain Men to maintain their malicious terprizes. And this extendeth as well the Takers as Givers. As alſo Stewards Bailiffs, who by their Power maintain bates that concern not their Lords, but o Parties.

Continu

Continuance, and Diſcontinuance.

AN Appeal commenced at the Gaol-delivery, diſcontinued by Removal to *B. R. Kel. Rep.* 90, 91. **Appeal.**

Plea diſcontinued on Removal by *Certiorari.* Id. 93. **Plea.**

Contra Pacem.

THAT an Indictment may be alledged *Contra Pacem* of two Kings. *Kel. Rep.* 11. **Indictment.**

Counſellor. Vide *Council.*

Conviction.

Vide *Auterfoits Convict.*

COnviction before a Juſtice of Peace for keeping a Gun, not having 100 *l. per ann.* and doth not ſay when, ſo quaſhed. *Mod. Rep.* 280. **Conviction quaſh'd.**

A Conviction before two Juſtices *ad pacem conſervand.* quaſhed for Default of the Word *Aſſignat.* 1 *Saund.* 263.

Copy.

Copy.

Copy of Indictment not allowable.

COpy of Indictment, or Council, in Cases of Treason, not grantable by Law. *Sidn. Try.* 7. And this, notwithstanding 46 E. 3. which (as Mr. *Sidney* alledged) provides, that *tout gents* shall have a Copy of every Record. *Ibid.* 9. 10.

But now is allowed.

But now by the *Stat.* 7 *W.* 3. *c.* 3. Every Person accused or indicted for High-Treason, whereby any Corruption of Blood may be made, or for Misprision of such Treason, shall have a Copy of the whole Indictment (but not the Names of the Witnesses) 5 Days at least before the Tryal, his Attorney or Agent requiring the same, and paying Fees for Writing, not exceeding 5 *s.*

Also a Copy of the Jurors.

Also, by the said *Stat.* such Person shall have a Copy of the Jurors who are to try him, at least 2 Days before the Tryal.

Formerly sometimes a Copy of the Pannel was indulged.

Before the said Statute, the Prisoner might not have a Copy of the Indictment, but was sometimes indulged a Copy of the Pannel, tho' it was not his Right. *Russel's Tryal*, 29, 30.

Coroner

Coroner.

HE hath Power in three Caſes, as firſt, To take Indictments of Death; but this can only do *ſuper viſum corporis*. Hale's C. 170. That his Record is of great Authority. *Id.* 171. — Coroner hath Power as to Indictments.

2*dly*, His Power concerning Appeals, together with the Sheriff in the County-Court, of Robbery and other Felonies in the ſame County. *Id.* 171. — As concerning Appeals.

And 'tis noted, That tho' there are more Coroners than one in any County, yet any one may exerciſe any of the Powers there ſet forth; but the Preſentment of him that is firſt taken ſtands. *Ibid.* — One may exerciſe.

If a Coroner be elected by the County, his Office does not determine by the King's Death. 1 *Lev. Rep.* 120. — Office determined.

Where the Depoſitions before a Coroner will be admitted for Evidence, the Witneſſes being dead. 1 *Lev. Ent.* 180. *Vide* Evidence. — Depoſitions before him.

The Coroner's Inqueſt finds that a Man drowned himſelf, *& ſic ſeipſum occidit & murdravit*, which Inqueſt was quaſh'd; yet a new Inquiry may be ſupply'd by a new Inquiry, by the Judges of Aſſize or Juſtices of Peace, which is traverſable; and it ſeems, that the Coroner's Inqueſt is traverſable in all Caſes, except *fugam fecit*. 2 *Lev. Ent.* 140, 141. — A new Inqueſt after the firſt quaſh'd.

Vide

Escape suffered.

Vide 3 *Lev.* 399. If there are two Cor ners, and one of them alone suffers a Escape, Whether both are Chargeable?

Council.

Who may be Council.

IN collateral Matters, any one may be Council with the Prisoner, without Assignment. 2 *Jones Rep.* 180. *O Carny's* Case.

Not in Treason.

Prisoner hath not Council in Treason, because the Proof must be plain. *Colm. Try.* 1 *Co.* 3. *Inst.* 137. *See after.*

The Court is Council.

In those Cases, where a Man can have no Council, (as Treason, *&c.*) the Court of Council for him; but where he may have Council, the Judges are not of Council for the Prisoner. *Oates* 1 *Try.* 66.

Allow'd in Treason.

Council in Treason not grantable, except in some special Point of Law, there Council may be granted. *Sydn. Try.* 7. *Co.* 3. *Inst.* 13

Now Council may be assign'd.

But now by the *Stat.* 7 *W.* 3. *c.* 3. If any Person indicted for High-Treason, whereby any Corruption of Blood may be made or Misprision of such Treason, shall desire Council, the Court before whom he shall be tryed shall assign him such Council as he desires, not exceeding two, who shall have free Access to him at seasonable Hours.

Must plead as Council advises.

A Prisoner indicted, and demanding Council, and having it, if he refuses to plead as his Council advises, Judgment shall go against him as his Crime requires. 3 *Co.* 175. *Jeffe's* Case.

Wh

What the Priſoner may alledge to obtain uncil as to Matter of Law. *See Co.* 3 *Inſt.* 7, *viz.* Such Matters as may make the ceedings erroneous; and of ſuch, it is ful for any Man then preſent in Court nform the Court. *Co.* 3 *Inſt.* 29. *&* 137. *vide Kelyngs Rep.* 12. where one acting Council ſhall not be excus'd for Treaſon. Allegations to obtain Council.

County.

N Tryals of Treaſon, it is not material that the Fact be proved to be done in the icular Pariſh laid in the Indictment, it fficient if proved to be done in the Coun- n any other Pariſh. *Charnock's Try.* 71. *libi.*

Vid. Place, Tryal.

Courts.

Oncerning the Juriſdiction or Court where Proceedings are to be had in ital Cauſes, *&c. B. Pl. Cor.* 156.

reſentments of Felony in a Court-Leet o be ſent before Juſtices of Gaol-Deli- . *Id.* 175.

ower of King's Bench to bail Offenders. *Vide* Bail.

ng and Swearing. Vide 6 *&* 7 *W* 3. *cap.* 11.

ng out Tongues, &c. Vide *Appeal.*

Deceit.

D.

Deceit, Covin, Colluſion, and *Fraud.*

Vide ante *Counterfeiting*, & poſtea *Forgery*, *Maintenance*, &c.

Offences of evil Conſequence.

THESE are look'd upon as Offences of evil Conſequence to the Commonwealth, againſt which the Law has made wholeſome Proviſion and Remedy by ſeveral Statutes, *&c.*

Proviſion againſt Officers.

It appears that, in the firſt place, the Law hath taken Care to prevent any Beginning of theſe and ſuch-like Offences, and that Officers who are to adminiſter Juſtice.

To prevent Brocage, *&c.*

The 12 *R.* 2. 2. enacts, That the Chief Officers ſhall be firmly ſworn; That they ſhall not name or ordain any Officers or Miniſters for any Gift or Brocage, Favour or Affection.

Buying of Offices.

And 5 & 6 *E.* 6. 16. was made to prevent the Buying and Selling of any Office of Juſtice.

Acting in Deceit of the Court.

Pleader.

By *Weſt.* 1. 29 3 *Ed.* 1. If any Perſon do act or conſent to any Thing in Deceit of the Court or Party, and thereof be attainted, he ſhall ſuffer a Year and Day Impriſonment at leaſt; and if he be a Pleader, he ſhall be alſo expelled the Court; and if they ſhall deſerve greater Puniſhment, it ſhall be at the King's Pleaſure.

A

Writ of Deceit.

Alſo the Stat. 2 *E.* 3. 17. provides, That Writ of Deceit ſhall be maintainable as ll in caſe of Garniſhment touching a a of Land, as in caſe of Summons of a a of Land.

Forging of falſe Deeds. Puniſhment.

The 5 *Eliz.* 14. was made to prevent rging of falſe Deeds, for which Offence Party may be put in the Pillory, have e of his Ears cut off, and be impriſoned a Year; and if it concerns a Freehold, Inheritance of Lands, he is to loſe both Ears, and his Noſtrils are to be ſlit and ed; he alſo forfeits the Iſſues of his nds, and to ſuffer perpetual Impriſonment ing Life. See this more at large in of *Forgery*, *Perjury*, *Subornation*, &c.

Felony to acknowledge Fine or Recovery in anothers Name.

By 21 *Jac.* 1. 16. It is Felony, without efit of Clergy, to acknowledge, or pro- e to be acknowledged, any Fine, Re- ery, Deed inrolled, Statute, Recogni- ce, Bail, or Judgment, in the Name of Perſon not privy or conſenting there- o: But this Offence ſhall not corrupt Blood, nor take away Dower, neither it extend to a Judgment acknowledged an Attorney of Record for another ſon.

Fraudulent Aſſurances.

he Stat. 50 *Ed.* 3. 6. was made to pre- t fraudulent Aſſurance of Lands or ds to deceive Creditors.

Fraudulent Conveyances to avoid Debts.

lſo by 13 *Eliz.* 5, all fraudulent Con- nces of Lands, Tenements, Heredita- rs, Goods, or Chattels, and all ſuch ds, Judgments, and Executions, made to d the Debt or Duty of others, ſhall (as inſt the Party only whoſe Debt or Duty endeavoured to be avoided, their Heirs,

Succeſſors, Executors, or Aſſigns) be utterly void, any Pretence, feigned Conſideration, *&c.* notwithſtanding.

Forfeiture and Penalty of the Contrivers, *&c.*

And every of the Parties to ſuch a fraudulent Conveyance, Bond, Suit, Judgment or Execution, who being privy thereunto ſhall wittingly juſtify the ſame to be done *bona fide*, or upon good Conſideration; or ſhall alien or aſſign any Lands, Leaſe, Goods ſo to them conveyed, as aforeſaid ſhall forfeit one Year's Value of the Lands Leaſe, Rent, Common, or other Profit out of the ſame, and the whole Value of the Goods, and alſo ſo much Money as ſhall be contained in the ſame Covinous Bond and being thereof convicted, ſhall ſuffer half a Year's Impriſonment without Bail; the Forfeitures to be divided betwixt the Queen and the Party grieved.

Impriſonment.

Conveyances to defraud Purchaſers.

By 27 *Eliz.* 4. Every Conveyance, Grant, Charge, Incumbrance, and Limitation of Uſe or Uſes, of, in, or out of any Lands or other Hereditaments, made to defraud any Purchaſer of the ſame in Fee, in Tail for Life or Years, ſhall (as againſt ſuch Purchaſer only, and every other Perſon lawfully claiming from, by, or under him) be utterly void, the ſaid Purchaſer having obtained the ſame for Money, or ſome other good Conſideration.

Forfeiture and Puniſhment of the Offenders.

And every of the Parties to ſuch fraudulent Conveyances, or being privy thereto, who ſhall juſtify the ſame to be made *bona fide*, and on good Conſideration, to the Diſturbance or Hindrance of the Purchaſer, or of any other lawfully claiming from, by, or under him, ſhall forfeit one

Year

ear's Value of the Lands or other Here-
itaments ſo purchaſed or charged, to be
vided between the Queen and the Party
rieved, and being thereof convicted, ſhall
ffer half a Year's Impriſonment without
ail.

By 29 *Car.* 2. *cap.* 3. for Prevention of audulent Practices endeavoured to be up-ld by Perjury, it is enacted, That all aſes, Eſtates, Intereſts of Freehold, or rms of Years, or any uncertain Intereſts or out of any Lands, Tenements, or He-ditaments, not put in Writing, and ſign'd the Parties making them, or their A-nts authorized by Writing, ſhall have no eater Effect than as Eſtates of Will, ex-pt Leaſes not exceeding three Years, hereof the Rent ſhall be Two Thirds of the l Value. 29 *Car.* 2. to prevent Frauds and Perjuries. Leaſes, *&c.*

That all Deviſes of Lands or Tenements ll be in Writing, and ſigned by the rty deviſing, or ſome other in his Pre-ce, and by his Direction, and ſubſcribed his Preſence by 3 or 4 Witneſſes. Deviſes of Lands.

And no ſuch Deviſe in Writing, ſhall be ocable otherwiſe than by Writing, or by rning, Tearing, or Cancelling the ſame the Teſtator, or in his Preſence, and by Conſent. How revocable.

That no Nuncupative Will ſhall be good, ere the Eſtate bequeath'd exceeds 30 *l.* is not proved by the Oaths of three tneſſes that were preſent at the Making reof, nor unleſs the Teſtator bid them ſome of them to bear Witneſs that ſuch his Will, nor unleſs it was made in his Sickneſs, and in his own Houſe, or Nuncupative Will.

where he had reſided ten Days, unleſs ſurprized by Sickneſs from Home; alſo it muſt be proved within ſix Months, unleſs committed to Writing within ſix Days.

Repealing a Will of any Perſonal Eſtate.

Alſo, no Will in Writing of any Perſonal Eſtate, ſhall be repealed by Words only, except the ſame be in the Life of the Teſtator committed to Writing and read to him, and allowed by him, and that proved by three Witneſſes.

There are ſeveral other Matters relating to Deeds and Contracts, to be obſerved from this Statute, made to prevent Frauds and Perjuries; for which, ſee the Statute at large.

Deceit and Covin by Artificers and Workmen.

Conſpiration by Artificers, &c.

By Stat. 2 & 3 *E.* 6. 15. Artificers, Workmen, and Labourers, that conſpire together concerning their Work or Wages, every of them ſo conſpiring ſhall forfeit

Penalty.

for the firſt Offence 10 *l.* to the King, and if he pay not within the ſix Days after Conviction by Witneſs, Confeſſion, or otherwiſe, he ſhall ſuffer twenty Days Impriſon-

Impriſonment.

ment, and during that Time ſhall have no Suſtenance but Bread and Water: For the ſe-

Second Offence.

cond Offence, he ſhall forfeit 20 *l.* and that not paid within ſix Days, as aforeſaid, ſhall

Third Offence.

ſuffer the Pillory; and for the third Offence ſhall forfeit 40 *l.* and that not paid within the ſaid Time, ſhall again ſuffer the Pillory, loſe one of his Ear, and ever after be taken as a Man infamous, and not to be credited.

Juſtic

Juſtices of Aſſize, Juſtices of Peace, Mayors, Bailiffs, and Stewards in Seſſions, Leets and Courts, have Power to hear and determine theſe Offences: But *Quære*, Whether this Branch of this Statute be not repealed by the general Words of 5 *Eliz.* 4. following, *Revived and continued*, 22 & 23 *Car.* 2. cap. 19. & 1 *Jac.* 2. *cap.* 17. *Quære.*

General Statute.

By the ſaid Statute of 5 *Eliz.* 4. ſo much of all Statutes made, and every Branch thereof, as touch or concern the Hiring, Keeping, Departing, Working, Wages, or Order of Servants, Workmen, Artificers, Apprentices and Labourers, or any of them, and Penalties and Forfeitures concerning the ſame, are repealed; howbeit the ſaid Statutes, and every Branch and Matter contained therein not repealed by this Act, ſhall remain in Force.

Theſe Deceits and Frauds, may be added ſuch as relate to Foreſtalling, Regrating and Ingroſſing of Victuals, Corn, &c.

A Foreſtaller, what.

Wherefore by Stat. 6 *E.* 6. 14. He or ſhe that ſhall buy or contract for any Merchandize, Victual, or other Thing whatſoever, (by the Way) before it ſhall be brought (by Land or by Water) unto any City, Port, Town, Fair, or Market where it ſhould be ſold, or ſhall cauſe the ſame to be ſo bought, or ſhall diſſwade People from bringing any Victual or Commodity to any ſuch Place, or (being brought) ſhall perſwade them to inhance

hance the Price thereof, ſhall be adjudged a Foreſtaller.

A Regrator, what.

A Regrator is he that buys any Grain, Wine, Fiſh, Butter, Cheeſe, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pidgeons, Conies, or other dead Victual whatſoever, brought to a Fair or Market, to be ſold there, and do ſell the ſame again in the ſame Fair or Market, or in ſome other Fair or Market within four Miles.

An Ingroſſer, what.

An Ingroſſer is he that gets into his Hands by Buying, Contract, or Promiſe (other than by Demiſe, Grant or Leaſe of Land or Tythe) any Corn growing in the Fields, or other Grain, Butter, Cheeſe, Fiſh, or other dead Victual whatſoever, with Intent to ſell it again.

Their Penalty, and Puniſhment.

The Party guilty of any of the Offences aforeſaid, ſhall forfeit for the firſt Offence the Value of the Goods ſo bought or had, and two Months Impriſonment without Bail.

Second Offence.

For the ſecond Offence, he forfeits the double Value, and ſix Months Impriſonment without Bail.

Third Offence.

For the third Offence, he ſhall forfeit all his Goods, be ſet upon the Pillory, and Impriſonment at the King's Pleaſure.

Allowance to Sea-Coaſters.

But this Act ſhall not reſtrain the Buying of Barley or Oats, to be converted into Malt or Oatmeal, nor the Proviſion of any Town Corporate, Ship, Caſtle, Fort, *Berwick*, *Holy Iſland*, &c. or any Fiſhmonger, Innholder, Victualler, Butcher, Poulterer, or People dwelling within one Mile of the main Sea, which uſe to buy and ſell Fiſh, for any Thing concerning their ſeveral Myſteries.

eries or Tradings, they Retailing the ſame t reaſonable Prices; nor any Badger, Lader, idder, or Carrier, aſſigned to that Office by ree Juſtices of the Peace, and delivering the ommodity out of his Hand within one onth after he buys it, nor the taking of y Thing reſerved upon a Leaſe; ſo that all eſe Things are done without Fraud and oreſtalling. And licens'd Badgers and Carriers, &c.

And by the Statute of 8 *Eliz.* 3. Whoever ſhall bring, ſend, or receive into any ip or Bottom, any Rams, Sheep, or Lambs, ing alive, to be conveyed out of the King's ominions, or procure the ſame, ſhall for e firſt Offence forfeit all his Goods for ever the King and Informer, and be imprined one Year without Bail, and then in me open Market, in the Fulneſs of the arket, on the Market-day, have his Left and cut off, and the ſame to be nailed up the open Place of ſuch Market; and for e ſecond Offence, it is made Felony. Exporters of Sheep and Wool, 8 *El.* 3. Puniſhment.

Vide *Felony*.

To theſe ſort of Deceits and Frauds, &c. ay be added thoſe of Extortion, Exaction, d Oppreſſion, which, by *Pulton de Pace*, e much inſiſted upon, in ſeveral Particus. *Vide Ibid. Et vide Wingate's* Abridgent, *Tit. Extortion.* Extortion, &c.

By *Weſt.* 1. 26. 3 *Ed.* 1. No Sheriff, or her Officer of the King, ſhall take any Reard to do his Office, but ſhall be paid by e King; and if he do ſo, he ſhall render e Double, and be puniſhed at the King's ill; In Officers.

In Clerks. *Weſt.* 1. 27. 3 *Ed.* 1. Clerks ſhall not commit Extortion, in Pain to loſe the Service of their Maſter for one Year.

In Criers Marſhals, *&c.* *Weſt.* 1. 30. 3 *Ed.* 1. Officers, Criers of Fee, and Marſhals of Juſtices in Eyre, ſhall not commit Extortion, in Pain to render the Treble, and to be otherwiſe puniſhed at the King's Will. See *Weſt.* 2, 42. 13 *E.* 1. where ſeveral ancient Fees of Marſhals, Chamberlains, Porters of Juſtices in Eyre, and Servants bearing Verge before the Juſtices at *Weſtminſter*, are ſet forth.

Among the former Offences of Fraud, Covin, Extortion, *&c.* may be fitly placed that of Uſury againſt the Statutes.

USURY.

Selling of Wares, *&c.* and buying them again at a leſſer Price. I. *Stat.* 37 *H.* 8. 9. None ſhall ſell his Wares or Merchandize to any, and within three Months after buy the ſame again at a leſſer Price, knowing them to be the ſame Wares, or buy any corrupt Bargain of Ware, Money, or other Thing; or buy any Mortgage of Land, and take in Gain, for giving Day of Payment, more than according 10 *l. per Cent.* to the Rate of 10 *l. per Centum* for one whole Year, in Pain to forfeit the treble Value of the Profits of ſuch Lands mortgaged, to be divided betwixt the King and the Proſecutor, and beſides, ſhall ſuffer Impriſonment, and make Fine at the King's Will.

Bonds and Contracts upon Uſury. II. *Stat.* 13 *El.* 8. All Bonds, Contracts and Aſſurances upon Uſury, in lending or doing any Thing contrary to the Statute 37 *H.* 8. 9. ſhall be void, and all Brokers and Solicitors thereof ſhall be adjudged an uſe

d as Counſellors, Attorneys, or Advo-
es, in any caſe of *Præmunire*. *Præmunire.*

II. He that takes no more than after the Intereſt for-
e of 10 *l. per Centum*, or leſs, ſhall only feited.
feit the Intereſt, to be recovered and em-
yed as the Forfeitures of 37 *H.* 8. 9.

V. Juſtices of *Oyer* and *Terminer*, of Aſ- Offences de-
and of Peace, in their Circuits and termined.
ions, and Mayors, Sheriffs, and Bailiffs
Cities, have Power to hear and determine
Offences committed againſt 37 *H.* 8. 9.

. The Statute of 37 *H.* 8. 9. ſhall be con-
ed largely and ſtrongly againſt the Party
nding, by any Way or Device, directly Device.
ndirectly.

VI. This Act ſhall not extend to any Al-
ances or Payments for the finding of Or-
ns, according to the ancient Rates of
don, or of any other City where Order
aken for their Cuſtody and Goods, as in
don.

VII. The Offender againſt the Statute of Eccleſiaſtical
H. 8. 9. may alſo be puniſhed by the Ec- Puniſhment.
iaſtical Laws.

VIII. *Stat.* 21 *Jac.* 17. None ſhall upon
Contract, directly or indirectly, take
he Loan of any Money or other Com-
dities, above the Rate of 8 *l. per Centum*, 8 *l. per Cent.*
one whole Year, in Pain to forfeit the
le Value of the Money, or other Things
.

X. No Scrivener, Broker, or Solicitor, Scrivener,
take or receive, directly or indirectly, Broker, *&c.*
Brokage, above the Rate of 5 *s.* for the
n of 100 *l.* for one whole Year, nor a-
e 12 *d.* for making a Bond, in Pain to
eit 20 *l.* to be divided betwixt the King

and

and the Profecutor, and alſo to ſuffer
Months Impriſonment.

X. *Stat.* 12 *Car.* 2. *cap.* 13. None
upon a Contract, directly or indirectly,
for the Loan of any Money, Wares, M
chandizes, or other Commodities, above
Rate of 6 *l. per Cent.* for Loan of 100 *l.* fo
Year, and ſo proportionably, upon pain
forfeit treble the Value of the Money, o
ther Things lent.

Scrivener, Broker, &c.

XI. No Scrivener, Broker, or Solicit
ſhall take or receive for Brokage above
Rate of 5 *s.* for the Loan of 100 *l.* for a Y
nor above 12 *d.* for making a Bond, up
Pain of Forfeiture of 20 *l.* to be divided
tween the King and the Profecutor, and
ſuffer half a Year's Impriſonment. Confirm
by 13 *Car.* 2. *cap.* 14.

Penalty of a *Præmunire*.

Note, The Penalty of a *Præmunire* is to
out of the King's Protection, to forfeit
their Lands and Goods, and to be impriſon
and ranſom'd at the King's Will. *Vide Pr
viſion & Præmunire.*

Defence.

Defence to be made for Priſoners.

BY *Wi. Williams*, in all Caſes wherein
Perſon ſwears directly againſt a Defe
dant, the Defendant, or his Council, (
caſe the Cauſe admits of Council) muſt e
deavour to ſhew from Circumſtances ari
out of the Fact, and farther Circumſtan
attending the Fact, and by probable Arg
ments, and reaſonable Deductions out of
Evidence, that the Defendant is not guil
a

d this where direct Evidence of his Inno-
ce cannot be had. *Hambden's Tryal* 19.

Demurrer.

Vide Plea.

HAT a Demurrer amounts to a Confession of the Indictment as laid. *Ha.* 243. — Is a Confession.

Depositions.

Vide Evidence.

N Trial for Murder, Depositions taken before the Coroner may be read for Evice, if the Party be either dead or beyond Seas; *Secus* of Depositions taken before ſtice of Peace. 2 *Jones Rep.* 53. — Before a Coroner.

et *Hale's Pl. C.* 263. ſays, Depoſitions be- a Juſtice may be read; but in Prudence Juſtice or his Clerk ought to be ſworn e ruth of the Examinations. — Before a Juſtice.

was reſolved by the Judges, that in caſe of the Witneſſes examined before the oner, abſent, were dead, or unable to l, and Oath made thereof; That then Examinations of ſuch Witneſſes ſo dead, nable to travel, might be read, the Cor firſt making Oath, That ſuch Examins are the ſame which he took upon Oath, — *Simile* to be uſed upon the Coroner's Oath, that the Priſoner is unable to travel, *&c.*

Oath, without any Addition or Alterati whatsoever. *Kelyn's Rep.* 55.

That he is detained.

So if Oath be made, That such an ex mined Witness is detain'd by the Means Procurement of the Prisoner. *Ibid.*

Oath that Witness cannot be found.

But it was agreed, That if a Witness wh was examined by the Coroner be absent, an Oath is made that they have used all the Endeavours to find him, and cannot fin him, that is not sufficient to authorize suc Examination. *Ibid.*

E. *Errp*

E.

Error.

Rror to reverſe an Outlary on an Indict-
ment for Treaſon, and Judgment re-
ed for Want of a true Addition, accor-
g to the Statute. *Show. Rep.* 392, &c.

Eſcape.

Y *Weſt.* 1, 3. 3 *E.* 1. Nothing ſhall be taken for the Eſcape of a Felon, until it djudged an Eſcape by the Juſtices in Eyre, ain of reſtoring as much to the Party v'd, and as much alſo to the King. — Nothing taken till the Eſcape adjudged.

y 31 *E.* 3. 14. The Eſcape of Felons, and Chattels of Felons, Fugitives, and Clerks vict, adjudged by the King's Juſtices, be levied as they ſhall fall. — How to be levied.

y *Stat.* 1 *R.* 3. 3. Juſtices of Peace have er in Seſſions to enquire of the Eſcapes elons. — Enquiry.

he Forfeiture of a Felon who eſcapes be-
arreſted, is of his Goods when preſent-
H. Pl. C. 111. — Eſcape before arreſted.

What ſhall be ſaid an Eſcape in the Party arreſts the Felon, whether it be by a Stranger — Eſcape in the Party arreſting.

Oath, without any Addition or Alterati whatsoever. *Kelyn's Rep.* 55.

That he is detained.

So if Oath be made, That such an ex mined Witness is detain'd by the Means Procurement of the Prisoner. *Ibid.*

Oath that Witness cannot be found.

But it was agreed, That if a Witness w was examined by the Coroner be absent, a Oath is made that they have used all the Endeavours to find him, and cannot fi him, that is not sufficient to authorize su Examination. *Ibid.*

E.

Error.

Rror to reverſe an Outlary on an Indict-
ment for Treaſon, and Judgment re-
ed for Want of a true Addition, accor-
g to the Statute. *Show. Rep.* 392, &c.

Eſcape.

Y *Weſt.* 1, 3. 3 *E.* 1. Nothing ſhall be taken for the Eſcape of a Felon, until it djudged an Eſcape by the Juſtices in Eyre, ain of reſtoring as much to the Party v'd, and as much alſo to the King. — Nothing taken till the Eſcape adjudged.

y 31 *E.* 3. 14. The Eſcape of Felons, and Chattels of Felons, Fugitives, and Clerks ict, adjudged by the King's Juſtices, be levied as they ſhall fall. — How to be levied.

y *Stat.* 1 *R.* 3. 3. Juſtices of Peace have er in Seſſions to enquire of the Eſcapes elons. — Enquiry.

he Forfeiture of a Felon who eſcapes be-
arreſted, is of his Goods when preſent-
H. Pl. C. 111. — Eſcape before arreſted.

What ſhall be ſaid an Eſcape in the Party arreſts the Felon, whether it be by a Stranger — Eſcape in the Party arreſting.

Stranger, or by an Officer, either volun
or negligent. *Id.* 112.

By an Officer taking Bail. What shall be said to be an Escape by
Officer, by bailing a Person not bailable,
having no such Power, either negligent
voluntary. *Id.* 113.

Punishment of negligent Escape. The ordinary Punishment of a negligen
Escape. *Ibid.* When to be answered by
Sheriff, when by the Gaoler. *Ibid.*

Of a voluntary Escape on Treason, &c. Here the Punishment upon a voluntary
scape, hath the same Crime that the Per
mitted to escape stood committed for,
Treason or Felony. *Id.* 114, 115. *Vide*
Rescue.

Amercement. *Et Vide Kelyn's Rep.* 5. On Escape of
lons, Township shall be amerced.

Rescue. *Et idem* 45. That a Felon secretly help
to escape, is a Rescue.

See for breaking of Prison, *Rescous & Esc*
Pulton de Pace, fo. 144, &c.

Evidence.

Notes used. *Vide* Depositions *and* Indictment.
Vide Witnesses.

Tho' not sworn. A Witness may make Use of Notes to
fresh his Memory, but his Testimo
must not be meerly to read them. *Colem*
Try. 48.

Printed Tryals. A Man may give Evidence, though
be sworn of the Jury. *Reading's Tryal* 11.

Printed Tryals not allowed to be cited
Evidence. 5 *Jes. Try.* 45. *Langhorn's Try*
17, 50. Hearsa

Hearſay, or a Report of what another ſaid, is no Evidence againſt a Priſoner. *gh. Try.* 22. Lord *Ruſſ. Try.* 48.

Hearſay rejected.

An Approver (who is one that confeſſing ſelf guilty of a Felony, accuſes another he ſame Crime) hath a Penny a Day; *North*, Chief Juſtice, to ſhew that *Oates Bedlow*'s Maintenance from the King was Objection againſt their Evidence. *Langh.* 27.

Maintenance from the King, no Objection.

Copy of a Record in the Lords Houſe ld not be admitted to be given in Evi- ce at *Langhorn*'s Tryal. (*p.* 44.) nor was he wed to prove by Witneſſes what *Oates* affirmed in Relation to him at another al. *Langh. Try.* 45, 49.

Copy of a Record in the Lords Houſe.

The Journal of the Houſe of Commons no dence, becauſe they have no Power to an Oath; but the Proceedings of the ſe of Peers are Evidence, becauſe that Court of Record. By *Jeffreys Ch. Juſt.* s 1 *Try.* 55. An Order of Court-Baron Evidence, otherwiſe the Judgment of a rt-Leet. *Id. ib.*

Journal of the Houſe of Commons.

If a Witneſs be ſworn to a particular ng, and ſpeak to another Matter which was not ſworn to give an Account of, can never be Evidence. By *Jeffr. C. Juſt.* s 1 *Try.* 65.

Witneſs ſworn to a Particular.

Hearſay is admitted for Evidence where it eſtabliſh another Witneſs's Teſtimony; here a ſecond ſwears, That he heard the Witneſs declare the ſame Thing formerly. s 1 *Try.* 70.

Hearſay admitted.

Where two Facts are alledged of the ſame n, and it be queſtioned whether it be the e Man, it is ſufficient that it is ſo reported;

Report admitted.

and

and this is good Evidence, unleſs ſome o
elſe of the ſame Name be produced. *Oates*
Try. 15.

In Treaſon. Evidence in Treaſon, may be of Facts
other Counties than where the Indictme
lays them. *Kel. Rep.* 15.

In Treaſon for Coining. One was indicted in *London* for Hig
Treaſon for Coining of Money, and upo
the Evidence it was proved againſt him
London as it ought to be, the Indictme
being there; but a great deal of more Ev
dence was given againſt him of commi
ting the ſame Crime in *Middleſex* and
Eſſex, which was agreed to be good Ev
dence to ſatisfy the Jury. *Id.* 33.

Evidence out of the Country.

Privately given. Where Evidence may be privately give
by the King's Counſel to the Grand-Jur
Id. 8.

Confeſſion. *Vide ante* Confeſſion, where upon Ex
mination it will not be Evidence agai
others, tho' Parties. *Id.* 18.

Of the Intent. Where Evidence of the Intent is nece
ſary in Felony. *Id.* 77.

Concealment of a Baſtard. Where Concealment of a Baſtard-chil
is Evidence of Murder of the ſaid Chil
Ibid. 32. *Vide Hale's Pl. C.* 266.

At another Day. Where the Indictment of Felony is
one Day, and the Evidence of anothe
how the Jury may find. *Id. H. Pl. C.* 26

To the Petit-Jury. What ſhall be good Evidence to the P
tit Jury in Caſes of Treaſon and Felon
Hales Pl. C. 262, 263.

Evidence attainted. One attaint of Conſpiracy, Forgery,
Perjury, not allowed as Evidence. *Id.* 26

Proving the Fact at another Place. If the Indictment lay the Felony at o
Place, the Evidence proving the Fact
anoth

her Place in the ſame County, main-
s the Indictment. *Id. Ib. & 265.*

the Indictment and Evidence differ in
e mortis, then it maintains it not as In-
ment of Poiſoning, Evidence of Stab-
maintains it not. *Ibid.*

Where Indictment and Evidence differ.

ut if the Indictment of Poiſoning with
kind of Poiſon, and the Evidence of
her; or of killing with a Dagger, and
Evidence is of killing with a Staff, yet
aintains the Indictment, for it agrees
ubſtance and Kind. *Ibid.*

Aliter where they agree in Subſtance.

Jeffrey's Ch. Juſt. Though in Strict-
we do not uſe to admit of what others
ſworn at another Trial, unleſs the
be dead that ſwore it, yet the Pri-
is ſometimes indulged ſo far as to
dmitted to prove it. *Oates* 2 *Try.* 46.

What others have ſworn.

idence may be given in Treaſon, to
the Temper of the Priſoner's Spirit,
how his Inclination hath been all a-
tho' that be not the Thing for which
directly called in Queſtion. *Rouſe Try.*
70.

To ſhew the Priſoner's Temper.

earſay from others is not to be applied
ediately to the Priſoner; however, thoſe
ers that are remote at firſt may ſerve
rove there was a general Conſpiracy
eſtroy the King and Government, and
as the conſtant Rule and Method about
Popiſh Plot, firſt to produce Evidence
e Plot in general. By *Ch. Juſt. Sidn.*
56.

Where Hearſay may be admitted.

o Witneſs admitted to prove what a-
er had formerly ſaid in Evidence, tho'
Party be now diſabled to come into
rt himſelf. *Hamb. Try.* 31.

What another had ſaid.

Opinion against King's Witneſs.

The Opinion of a third Party against King's Witneſs, on Behalf of the Priſo at the Bar, not admitted as Evidence. to prove, that the Lord *E.* had no g Opinion of the Lord *H.* who gave E dence againſt Mr. *H.* makes nothing Mr. *H. Hamb. Try.* 36.

Producing Evidence.

It is not regular to produce any E dence without firſt opening it. *Rookw Try.* 63.

Of Overt-Act not laid.

By the late Act for regulating Tria Caſes of Treaſon, 7 *W.* 3. *c.* 3. No Evid is to be admitted of any Overt-Act is not expreſly laid in the Indictme but it does not exclude Evidence order to prove an Overt-Act laid, ſuch Evidence be not laid. *Rookw. Try.*

Upon not repairing a Way.

What may be given in Evidence u *Non Cul.* to a Preſentment or Indictmen not repairing a Way. *Show. Rep.* 270.

Upon Information of Perjury.

What is good Evidence in an Infor tion for Perjury in an Affidavit. *Id.* 3

Vide Baron, Depoſitions, Examinatio *Trials*, &c.

Examination.

Vide Confeſſion. Depoſitions. Evidenc

Examination of Felons before Commitment.

PERSONS accuſed of Manſlaughte Felony, who for Want of Bail a be ſent to Priſon, muſt be examined fore the Juſtice before he commits t

d the Accuſers bound over to appear and ve Evidence againſt them at the next aol-delivery, whoſe Examination muſt be ken and committed to Writing within o Days at the fartheſt, and certified by e ſaid Juſtice, with the Bonds or Recog-zances of the Accuſers at the ſaid next aol-delivery. *Stat.* 2 *&* 3 *P. & M. c.* 10.

Examination before a Juſtice, muſt be ly ſubſcribed to by the Offender, and t upon his Oath; but Examination of hers muſt be upon Oath. *Hale Pl. C.* 262. Subſcribed by the Offender.

Theſe Examinations, if the Party be dead abſent, may be given in Evidence; but t Examinations relating to a forcible arriage in a Trial, upon the *Stat.* 3 *H.* 7. p. 2. *Hale Pl. C.* 263. How to be given in Evidence.

That Prudence requires that the Juſtice his Clerk be ſworn to the Truth of the xaminations. *Ibid.* Juſtices Oath.

Vide Kelyn's Rep. for Confeſſion on Exa-inations, 11, 18, 19.

Exception.

NO Exception to Witneſſes in Treaſon, becauſe they have been concerned y their own ſhewing in the ſame Crime, or they are the moſt proper Perſons to be vidence, none being able to detect ſuch Councils but them. Lord *Ruſſel Try.* 61. Againſt Witneſſes in Treaſon.

No Bill of Exceptions in Criminal Caſes. *Kel. Rep.* 15. Bill of Exceptions.

Vide inf. Tit. Quaſhing. *Tit.* Indictment.

Execution.

Muſt be purſuant to the Judgment.

EXecutions muſt be purſuant to the Judgment, and cannot be altered by the King; as in Felony, from Hanging to Beheading. *Hale Pl. C.* 268, 272. But the King

Pardon of Part.

may pardon Part of the Execution; as in Treaſon, he may pardon all but Beheading, *Hale Pl. C.* 272. Yet there have been ſome

E contrà.

Inſtances of Beheading after Judment in Felony, as of *Edward* Duke of *Somerſet*, in the Reign of *E.* 6. and *Merwyn* Lord *Audely* in the Reign of *Ch.* 1. So of ſome Women who have been beheaded, tho' the Judgment is not ſo, neither in Felony nor Treaſon. *Vide Co.* 3 *Inſt.* 211.

Malice in the Executioner.

If the Sheriff or other Officer, where he ought to hang the Party attainted, according to his Judgment, or Charge, will burn or behead him, or *e converſo*, the Law in

In a Lieutenant, *&c.*

this Caſe implieth Malice. *Co.* 3. *Inſt.* 52.

If a Lieutenant or other, in time of Peace, hang or otherwiſe execute any Man

On Attainders, *&c.*

by Colour of Martial Law, this is Murder. *Ibid.*

How Execution is awarded on Attainders by Outlawry. *Kel. Rep.* 13.

Not the ſame Perſons pleaded.

And where the Perſons pleaded they were not the ſame Perſons, immediate Trial was had thereupon. *Ib.*

On challenging 36.

The Execution is Hanging, not Preſſing, on challenging Thirty Six. *Id.* 36.

Where the Conviction was.

The Criminal muſt be executed in that County where the Trial and Conviction is had.

ad, unleſs in *Middleſex*, by Perogative of
. *R.* 3 *Mod.* 124.

If a Woman convict of Treaſon or Fe- Woman quick with Child.
ny be quick with Child, ſhe ſhall have
he Reprive, but not a ſecond Time. *Hale*
. C. 272. 2.

F.

Falsifying Attainder.

1. BY the Party by Writ of Error. 2. By others falsifying it. *Pl. C.* 270, *&c.*

Felonies.

Vide *Burglary.*

Felony defined next unto Petit-Treason.

FELONY is said to be any Offence which is in Degree next unto Petit-Treason and compriseth divers Particulars under it, as Murder, Theft, *Felo de se*, Sodomy, Rape, wilful Burning of Houses, and such like, which be gathered from the Statutes, *&c.* It is distinguished from lighter Offences, for that the Punishment thereof is Death. Yet Petit-Larceny, which is the Stealing of any Thing under the Value of 12*d.* is said to be Felony, and yet not punished by Death. *Cowel's Interp. verb. Eodem.* That of the Felonies there be two Sorts; one higher, for the first Time may be reliev'd by Clergy, another that may not, for that Clergy is allowed where it is not expressly taken away. *Ibid.* See Tit. *Clergy.*

The Punishment is Death.

Aliter of Petit-Larceny.

Clergy allowed

Again, Felonies are ſaid to be,

1ſt, Either by Common Law: Or, — By Common Law, and Statute Law.

2dly, By Statute. *Vide Hale's Pl. C.* 26, &c.

That Felonies by the Common Law are Four Kinds: — By Common Law.

1. Such as are committed againſt the Life of a Man.

2. Such as are againſt the Goods of a Man.

3. Such as are againſt the Habitation of Man.

4. Such as are againſt the Protection of Publick Juſtice. *Ibid.*

(1.) That Felonies committed againſt the Life of a Man are of two Natures. *Id.* 26. — Againſt a Man's own Life.

Firſt, that which is committed againſt his own Life. *Vide Tit. Felo de ſe.*

2*ly*, That which is committed againſt another's Life, which may be either Involuntary, as *per Infortunium*, or *per Neceſſitatem*, in Defence of Juſtice, or in Defence of a Man's ſelf. Or, Secondly, it may be Voluntary without Malice or with Malice. *Ibid. & 27, &c.* — Againſt another's Life. Voluntary or Involuntary, *per Neceſſitatem.*

That which is accounted Involuntary, *per Infortunium*, is termed Chancemedley. See Tit. *Chancemedley. Idem* 31. — Involuntary.

That in Defence of Juſtice, is called *Homicide ex Neceſſitate*, and it may either refer to publick Juſtice, or to a Man's private Intereſt, and therefore juſtifiable, as againſt Thieves, Raviſhers, Robbers; or elſe excuſable, as *ſe defendendo. Id.* 35, 41, *&c.* — *Homicide ex Neceſſitate.* *Se defendendo.*

Such as are accounted Voluntary, *ex Malitia precogitata*, is termed Murder. *Id.* 43, *&c.* — Murder.

Manſlaughter. That which is done without Malice, termed Manſlaughter. *Id.* 56, *&c.*

See the ſeveral Titles, *Chancemedley*, *micide*, *Se Defendendo*, *Murder*, and *Manſlaughter*.

Againſt his Goods, Larceny. (2.) Such Felony as is againſt the Goods of a Man, is termed Larceny, which is ſaid to be Simple-Larceny, or Mix'd and Complexed Larceny.

Grand-Larceny and Petit-Larceny. Simple-Larceny is alſo of two Kinds, one whereof is termed Grand-Larceny, the Value of 12 Pence; the other is called Petit-Larceny, being under the Value of 12 Pence. *Vide Tit.* Larceny.

Mix'd-Larceny. Complicated or Mix'd-Larceny, hath a farther Degree of Guilt in it.

Firſt, For that it is taking from the Perſon. And,

Secondly, For that it is a taking out of the Houſe.

Robbery. And when by taking away from the Perſon he is put in Fear, 'tis called Robbery; and when he is not put in Fear, then 'tis Larceny from the Perſon. *Vide Tit.* Robbery. *Idem* 71.

Piracy. To theſe are added, Piracy and Depredation upon the Sea. *Idem* 77.

Vide Piracy.

Againſt his Dwelling, Burglary. (3.) Felony againſt the Dwelling or Habitation of a Man, and that is of Two Kinds: 1. Burglary. 2. Burning or Arſon. *Id.* 79. *Vide Tit.* Arſon, *& Tit.* Burglary.

Againſt publick Juſtice. (4.) Such Felonies as are againſt the Protection of publick Juſtice, as hindring a Felon to be brought to publick Juſtice. And this may be,

1. E

1. By the Party himſelf, as Breach of riſon and Eſcape. Or, — Eſcape.

2. In the Officer or Perſon that permits , and then it may be either Voluntary or voluntary. Or,

3. It may be by a Stranger, which is eſcue. *Id.* 87, *&c.* — Reſcue.

Vide Tit. Eſcape and Reſcue.

Under this Fourth Head of Felonies by e Commom Law, are conſidered,

1. Arreſts, *Hale Pl. C.* 89. either by a rivate Perſon or publick Officer, *&c.* — Arreſts.

2. Bail, what it is, in what Caſes, and by hom. *Id.* 96. — Bail.

3. Rumper Priſon, and what is a Priſon ithin the Statute: *Id.* 107. — Rumper Priſon.

4. Eſcape in the Party. *Id.* 111. — Eſcape.

5. Eſcape in the Officer, or him that akes the Arreſt. *Id.* 112.

6 Eſcape by an Officer, either thro' egligence, or elſe Voluntary. *Id.* 113, *&c.* — Reſcue.

7. Concerning the Reſcue of a Felon, c. *Id.* 116.

See the ſeveral Titles of *Arreſt*, *Bail*, *Priſon-breaking*, *Eſcape*, *Reſcue*, &c.

And 'tis noted, That Felony ordinarily orketh Corruption of Blood, tho' not here a Statute ordaineth an Offence to be lony, and withal ſaith, that it ſhall not ork Corruption of Blood, as *Anno* 39 *liz. cap.* 17, *&c.* — Corruption of Blood.

Vide ante Burglary.

Pulling down Encloſures, Felony. *Kel.* p. 75. So Breaking of Priſons whereby lons eſcape, and in ſome Caſes Treaſon. 77. — Pulling down Encloſures.

Note:

Fences, &c. *Note*, That Fences pull'd down, either by Day or Night, are not within the Statute so as to charge the next Vills, if the Person are to be known. 1 *Lev. Rep.* 108.

Cutting down Corn, &c. To cut down Corn, and carry it away the ſame Time, is no Felony; but to cut down, and lay it by, and carry it away afterwards, is Felony. 1 *Mod. Rep.* 89.

It may be obſerved from the general Abridgments of the Statutes as follows, *viz.*

Notorious Felons. I. *Weſt.* 1. 12. 3 *E.* 1. Notorious Felons which refuſe lawful Tryal, ſhall ſuffer ſtrong and hard Impriſonment.

Priſon breaking. II. *Stat.* Of breaking Priſon, 1 *E.* 2. ſhall be Felony for any Perſon to break Priſon, being in for Felony, otherwiſe not.

Multiplication. III. *Stat.* 5 *H.* 4. 4. It is Felony to multiply Gold or Silver. Repealed.

Cutting out Tongues. IV. *Stat.* 5 *H.* 4. 5. It is Felony maliciouſly to cut out the Tongue, or put out the Eyes out of any of the King's Subjects. *Vide Lit. C.*

Hunting in Forreſts, &c. V. *Stat.* 1 *H.* 7. 7. If any ſhall hunt with in Forreſts, Parks, or Warrens, in the Night time, or diſguiſed, one of the King's Council, or a Juſtice of Peace, to whom Information thereof ſhall be made, ſhall by his Warrant cauſe the Offender to be brought before himſelf, or ſome other Councellor or Juſtice of Peace, to be examined; where if he conceal the Fact, ſuch Hunting ſhall be deemed Felony; but being confeſſed, the Offender is only finable at the next General Seſſions. And here a Reſcouſe of the Execution of any ſuch Warrant ſhall be alſo deemed Felony.

VI. *Stat.* 3 *H.* 7. 2. It is Felony to carry way a Woman, Wife, Widow, or Maid, ainſt her Will, having Lands or Goods, being Heir Apparent to her Anceſtors: nd the Procurators, Abettors, and Reivers, in ſuch an Offence, ſhall be alſo emed principal Felons. Howbeit, this all not extend to any that takes a Woman, aiming her as his Ward or Bond-Woman. Carrying away a Woman.

VII. *Stat.* 3 *H.* 7. 14. It is Felony for any the King's Servants ſworn, to conſpire e deſtroying of the King, any Lord, Pri-Counſellor ſworn, Steward, Treaſurer, Comptroller of the King's Houſhold, eing thereof convicted by Twelve of the id Houſhold, before the ſaid Steward, reaſurer, and Comptroller, or two of them, ho have Power to determine the Matter cording to Law. Conſpiracy by the King's Servants.

VIII. *Stat.* 21 *H.* 8. 7. Servants that go way with, or otherwiſe embezel their Maers or Miſtreſſes Goods, to the Value of o *s.* worth, with an Intent to ſteal them, being put in Truſt therewith) ſhall be puiſhed as Felons: To continue till the next arliament: *But See the Statute.* Servants embezeling Maſters Goods.

IX. *Stat.* 22 *H.* 8. 11. It ſhall be Felony to reak down Powdike in *Marſhland* in *Norfolk*, r *Oldfield* Dike by *Marſhland*, in the Iſle of *Ely*. Powdike.

X. Juſtices of Peace there have Power to ear and determine the ſaid Offence. Offences determined.

XI. *Stat.* 25 *H.* 8. 6. Buggery is made elony, and the Offender therein ſhall not ave his Clergy. Buggery.

XII. Juſtices of Peace have Power to enquire of, hear, and determine this Offence. Offence determined.

XIII.

XIII. This Statute was but to continue t the next Parliament. *Vide infra.*

Poiſoning, Murder.

XIV. *Stat.* 1 *E.* 6. 12. Wilful killing b poiſoning, ſhall be adjudged Murder, a their Aiders, Abettors, Procurers, and Coun ſellors, ſhall ſuffer Death, and forfeit as i Caſes of wilful Murder.

Felonies repealed and revived.

XV. All Offences made Felony by Sta tutes, ſince 23 *April*, 1 *H.* 8. not being Fe lony before, are repealed. *Howbeit divers them are revived by other Statutes made ſin that Time.*

Felonies again repealed.

XVI. *Stat.* 1 *M. Seſſ.* 1. All Offences ma Felony, or within the Caſe of *Præmuni* by any Act ſince the firſt Day of 1 *H.* (not being Felony, or within the Caſe *Præmunire* before) and every Branch of ſuc Acts concerning the making of any Offenc Felony, or within the Caſe of *Præmuni* (not being ſo before) and all Pain and Fo feitures concerning the ſame, are repeal and made void: *But divers of thoſe Acts be been ſince revived, which ſee in their prop Places.*

Again revived.

XVII. *Stat.* 5. *El.* 10. The Statute of 2 *H.* 8. 7. is revived, and made perpetual.

Revived.

XVIII. *Stat.* 5 *El.* 17. The Statute of 1 *H.* 8. 6. is revived, and made perpetual.

Carrying away Perſons againſt their Will, in *Cumberland*, &c.

XIX. *Stat.* 43 *El.* 13. In the Counties *Cumberland*, *Northumberland*, *Weſtmerla* and the Biſhoprick of *Durham*, the carryi away or detaining of any Perſon againſt h or her Will, the aſſenting or aiding to a ſuch Taking or Retaining, the receiving carrying of *Black mail*, the giving of *Bla mail* for Protection, or the burning of Barn or Stacks of Grain, ſhall be adjudged Felon

witho

hout Clergy, which the Juſtices of Aſſize, ol-Delivery, and Peace, have Power to r and determine.

XX. The Names of Perſons outlawed there Felony, ſhall be deliver'd by the Clerks of Peace, to all Sheriffs, Mayors, and other d-Officers, to be proclaimed throughout he ſaid Counties; and with them none l have Converſe, in pain to ſuffer ſix nths Impriſonment, and not to be en- ed, till Surety be given for the good Be- iour, during one whole Year after ſuch riſonment. Outlaws for Felony.

XXI. Juſtices of Aſſize, Gaol-Delivery, and *Terminer*, and of Peace, have Power uniſh the Negligence of Officers in this alf. Juſtices Power.

XXII. This Act ſhall not impeach the Au- ity of the Lord Wardens of the Marches. Lord Warden.

XXIII. *Stat.* 21. *Jac.* 26. It is Felony, hout Benefit of Clergy, to acknowledge procure to be acknowledged any Fine overy, Deed inrolled, Statute, Recogni- ce, Bail, or Judgment, in the Name of Perſon not privy or conſenting there- o, *&c.* Acknowledging Fines and Recoveries in others Name.

XXIV. 13 *&* 14 *Car.* 2. *cap.* 18. Exporta- of Sheep, Wool, *&c.* made Felony. Wool exported.

XXV. *Stat.* 22 *&* 23 *Car.* 2. *cap.* 1. If any purpoſe, and of Malice forethought, or lying in wait, ſhall cut out or diſable Tongue, put out an Eye, ſlit the Noſe Lip, *&c* ſhall ſuffer Death as in Caſes of ny, without Benefit of Clergy. *Vide ante* C. *Cutting out Tongues*, &c. Cutting out or diſabling Tongues, *&c.*

XXVI. *Stat.* 22, 23 *Car.* 2. *cap.* 7. Perſons ſhall in the Night-time maliciouſly burn any Burning Ricks or Stacks of Corn, *&c.*

any Stacks or Ricks of Corn, Hay, or Grai
Barns, other Houſes or Buildings, or Kil

Deſtroying Cattle.

or deſtroy Horſes, Sheep, or other Cat
ſhall ſuffer Death as in Caſes of Felony. A
here the Offender attainted may elect to
tranſported for ſeven Years, and any retur
ing within ſeven Years ſhall ſuffer Death,
if no ſuch Election had been.

Maiming or hurting Cattle.

Alſo if any ſhall in the Night-time ma
ciouſly maim, or otherwiſe hurt any Hor
Sheep, or other Cattle, or deſtroy any Pla

Throwing down Incloſures.

tation of Trees, or throw down Incloſur
they ſhall forfeit to the Party griev'd, tre
the Dammage, by Action of Treſpaſs, or
on the Caſe.

References to Felonies.

Concerning Felonies by the Statute
Clergy; *& vide Hal. Pl. Coron.* 117, 118
with the many others which may be
ſerved throughout this Treatiſe.

Felon a Witneſs.

Where one attainted of Felony, or bu
in the Hand, may be a Witneſs. *K*
Rep. 37.

Plea by a Felon.

It is noted, That he who pleads a Ple
Bar to an Indictment or Appeal, that
feſſeth not the Felony, ſhall plead ove
the Felony; otherwiſe if it confeſs the
lony, as Pardon or Releaſe. *Hal. Pl. C.*

Felo de ſe.

Concerning the Perſon that commits this Felony, and of his Age, and that e muſt be *Compos Mentis. Hale Pl. C.* 28. — Concerning his Age, &c.

That the Death muſt enſue within a ear and a Day after the Stroke, *&c. Ibid.* — Death within a Year.

That the Act may be voluntary, and in me Caſes involuntary. *Ibid. &* 29. — The Act.

Concerning the Forfeiture, when by the onviction, and how relating to the Stroke. f what Joint Things intire, and of what oint Things ſeverable, only a Moiety. *Ibid.* — The Forfeiture.

That all Joint-Chattels in Husband and Vife, are fofeited for this Offence of Hus- and. *Ib.* 30. — Chattels.

A *Felo de ſe*, is not a Murder within the xception of Murder in the Act of Ge- eral Pardon; but the Goods of *Felo de ſe* e not reſtored by the Pardon, without ecial Words. 1 *Lev. Rep.* 8. — Pardon.

Where a Pardon, except Murder, does ot except *Felo de ſe. Ib.* 120. — Not excepted.

Felo de ſe drown'd himſelf. *Vide* Inqui- ion. — Inquiſition.

No Forfeiture of a *Felo de ſe* accrues efore Inquiſition taken and return'd. *Saund. Rep.* 275, 362. *Vide* Grants; *Et ide* Information. — No Forfeiture before Inquiſition.

Feme-Covert.

Vide Wives.

No Evidence againſt her Husband.

THE Wife (nor the Wife's Examinations) is not to be produced or uſed neither for nor againſt her Husband. *Hale Pl. Cor.* 263. *Co. Lit. fo.* 6. *b.*

Nor he againſt her.

Nor the Husband againſt his Wife, except in Treaſon, *Raym. Rep. p.* 1. Mary Grig's *Caſe.*

Fighting or drawing Weapon, in the Church-yard, with an Intent to ſtrike.

FOR the Firſt, Excommunication.

For the Laſt, to have one of his Ears cut off; and in caſe he want Ears, ſhall be burnt in the Cheek with the Letter *F.* and ſhall ſtand excommunicate *ipſo facto.* Stat. 5 & 6 *Ed.* 6. 4.

Fines.

Vide Bail. *Vide* Impriſonment.

A joint Conviction, and ſeveral Fines.

VIDE 1 *Lev. Rep.* 126. A joint Conviction of ſeveral being Criminals; yet ſeveral Fines. *Vide eund.* 146. where it is ſaid, The Intent to do a Felony without doing it, is finable; *Bacon's* Caſe: And the

Part

y was fined 1000 Marks upon his be- Fined for In-
indicted for intending to murder the tention of
ter of the Rolls. Murder.

ide 1 *Lev. Rep.* 125. where the Court Part to the
e the Profecutor Part of the Fine to- Profecutor.
ds his Charges.

Forcible Entry and Detainer.

Orcible Entry, it's ſaid, muſt be either Forcible En-
manuforti, furniſhed with unuſual try, what.
pons, or by Menace of Life or Limb,
king open the Door, and ejecting
bly the Poſſeſſors *cum multitudine gen-*
&c. And yet it's ſaid, One may com-
a Force, but Three at leaſt a Riot. *Vide*
Pl. Cor. 138.

Stat. 5 *R.* 2. 7. It is enacted, That 5 *R.* 2. 7.
ſhall make Entry into any Lands and
ements, but in caſe where Entry is
n by the Law, and then not with
g Hand, nor with Multitude of Peo-
but only in a peaceable Courſe and
ner. And if any do the contrary, and Fine and Pu-
hereof duly convict, he ſhall be puniſh- niſhment.
y Impriſonment and ranſom'd at the
g's Pleaſure.

15 *R.* 2. 2. Proviſion is made, That Forcible En-
n Forcible Entry is made into Land, try into Land,
hurch Livings, one or more Juſtice of or Church
Peace taking ſufficient Power, and go- Livings.
to the Place ſo kept by Force, may
mit the Offender to the Gaol, there to
in convict by the Juſtices Record, till

Fine and Imprisonment.

he hath made Fine and Ranſom to the King; and herein the Sheriff and all others ſhall be Aſſiſtants, in pain of Impriſonment and making great Fines. Concerning

Vi laica, &c.

Writ *Vi laica removenda, Vide Pulton de* 42. And where Force ſhall be removed for the King's Incumbent, and where not.

Forcible Entry and Detainer.

And by the Stat. 8 *Hen.* 6. 9. The Statute of 15 *H.* 2. 2. ſhall be duly put in Execution both againſt Forcible Entry, and Forcible Detainer, and this to be at the Coſts of the Party grieved. *Note*, It is ſaid that by Stat. 5 *R.* 2. the Detainer may be forcible, tho' the Entry was peaceably made. Alſo when Complaint of any ſuch Entry or Detainer ſhall be made to any Juſtices or Juſtices of the Peace, this Stat. 8 *H.* 6. provides, That ſuch Juſtice or Juſtices by Precept ſhall command the Sheriff to ſummon a ſufficient Jury, and having by them made Inquiry of the Force committed, cauſe the Tenements to be ſeized, and that as well in the Abſence as Preſence of the Party offending: And here the Alienation of the Tenements, (ſo entred into, or obtained by Force) for Maintenance ſhall be adjudged void.

Jury to be ſummoned.

Maintenance

Iſſues upon Jurors.

And if the Jurors make Default, Iſſues are to be ſet upon them by the Sheriffs, 20 *s.* upon the firſt Precept; 40 *s.* upon the Second; 100 *s.* for the Third; and for every Default after, double.

Neglect of Sheriff, *&c.*

The Sheriff or Bailiff that ſhall neglect his Duty herein, ſhall forfeit 20 *l.* to be recovered againſt him, as well before the Juſtices aforeſaid, as before Juſtices of Aſſize

Indictment or Bill, and to be divided twixt the King and Profecutor.

That in an Aſſize of *Novel Diſſeiſin*, or tion of Treſpaſs againſt the Party guilty Forcible Entry, Forcible Detainer, and enation as aforeſaid, the Party grieved ll recover treble Dammages. — Treble Dammages.

And Head Officers, and Juſtices of Peace Corporations, have like Power within ir Franchiſes, that other Juſtices of Peace e within Counties. — Offences determined.

But this Statute is to indammage none, ere peaceable Poſſeſſion hath been en ed by the Space of three Years. — Three Years Poſſeſſion.

And by 31 *Eliz.* 11. There ſhall be no itution upon an Indictment of Forcible ry and Detainer, where the Defendant been three Years next before in quiet eſſion, and his Eſtate therein not ended. — *Simile*, and no Reſtitution.

And by 21 *Jac.* 15. Upon Force or Deer as aforeſaid, a Juſtice or Juſtices of ce, have Power to give Reſtitution of eſſion, as well into Tenants for Years, *Elegit*, Statute Merchant or Staple, Colders, or Guardians by Knights-Ser-, as unto thoſe that claim Freehold or eritance. — Reſtitution, to whom.

y the Statute 4 *H.* 4. 8. If any make cible Entry into Lands by way of Maintnance, the Chancellor of *England* ſhall nt a ſpecial Aſſize, without ſuing to the g: And if the Diſſeiſor ſhall be attainthereof, he ſhall ſuffer one whole Year's riſonment, and reſtore double Damges to the Party grieved, and no *Super*as ſhall be granted to the contrary of Aſſize. — Entry by way of Maintenance. — Special Aſſize. — Double Dammages, &c.

Taking away Goods, &c.

And if he be convict by the ſame Aſſize that he hath taken away any Goods or Chattels of ſuch Diſſeiſees, the Juſtices of Aſſize ſhall hear and determine as well for the King as the Party, of the Goods and Chattels ſo carried away, and to award to the Party grieved his Dammages.

Obſervations upon the foregoing Statute.

Upon the aforeſaid Statutes, it is obſerved That if a Man be diſſeiſed by Force of any Lands or Tenements by way of Maintenance, or that his Goods be taken or carried away after ſuch Entry made; or that he be put out or diſſeiſed of his Lands in forcible Manner; or that he be put out peaceably, and after holden out with Force againſt a Juſtice of Peace; or after ſuch Entry, any Feoffment or Diſcontinuance be made to defraud and take away the Right of the Poſſeſſor, then the Party grieved (as the Caſe requireth) may have a ſpecial Aſſize againſt the Diſſeiſor, and recover his double Dammages, and Dammages for his Goods, and the Diſſeiſor ſhall be one Year impriſoned, according to the aforeſaid Statute of 4 *H.* 4. 8.

Several Remedies.

Aſſize or Treſpaſs.

Or elſe he may have an Aſſize of *Novel Diſſeiſin*, or an Action of Treſpaſs againſt the Diſſeiſor, and recover treble Dammages, and moreover the Diſſeiſor ſhall make Fine and Ranſom to the King, according to the aforeſaid Statute of 8 *Hen.* 6. 9.

Juſtices Removal and Record.

Or if the Plaintiff will omit the Benefit of Recovery of his Dammages, he may only crave and uſe the Aſſiſtance of a Juſtice of Peace to ſee and remove the Force, and record it, to inquire of it, and to make him Reſtitution, according as the Truth

Case ſhall appear to the ſaid Juſtice up- his own Sight, or be found by Inquiſi- according to the 8 *H.* 6. 9.

Or laſtly, he that is put out, or holden of his Lands with Force, may have a rit directed out of the Chancery to the riff only, or to the Sheriff and the Ju- es of Peace, upon the Statute of *Nor- mpton*, *Anno* 2 *Ed.* 3. 3. commanding that clamation be made upon that Statute. Pulton *de Pac.* 35. *Sect.* 5. — Writ out of Chancery. — Proclamation.

t is a Detainer by Force, if the Diſſeiſor ſe to admit the Juſtice to come in to w the Force: Alſo a forcible Detainer y be by Words only, as when he that wrongfully, but peaceably, entred into ther Man's Houſe, and expelled and put the Owner thereof, ſhall ſay to the e Owner, That if he come thither again nter, he will kill him. *Vide Hale Pl. C. Pult. de Pac.* 38. *b. Sect.* 22. — Detainer, what. — By Menaces.

Woman Covert may commit a Diſſeiſin Force, and be impriſoned therefore; ſo may an Infant of the Age of 18 s, or above, commit a Diſſeiſin by Force, be impriſoned; but if he be of tender , he ſhall not be adjudged a Diſſeiſor Force, nor be impriſoned. *Pult. de* 40. *Sect.* 30. — By a Woman Covert, or Infant.

the Poſſeſſion of the Party be lawful, f within three Years he be actually re- ed, tho' reſtored by the Juſtices, this en- not a Detainer by Force. *Hale Pl.* 139. — Removal within three Years.

t if the three Years Poſſeſſion hath been Force, then the laſt Forcible Detainer is ſhable, and hinders not Reſtitution. — Three Years Poſſeſſion by Force.

And if a Diſſeiſee within three Years ma
lawful Claim, this is an Interruption of t
Poſſeſſion. *Ibid.*

Diſſeſed of a lawful Poſſeſſion, and again reſtored.

So that if a Man hath been in qui
and peaceable Poſſeſſion of Lands three Yea
or more, by a good Title, and then is d
ſeiſed and expelled, and the Party offend
is therefore indicted upon the *Stat.* 8 *H.*
and the Diſſeiſee who was expelled is re
red to his Poſſeſſion by a Writ of Reſti
tion, and is in Poſſeſſion accordingly;

May not thereby juſtifie a Detainer.

this Caſe he cannot juſtify the Detainer
the Poſſeſſion of thoſe Lands by vertue of
Proviſo in 8 *H.* 6. becauſe his Poſſeſſion w
interrupted and diſcontinued, for that P
ſeſſion muſt be three whole Years toget
without Interruption, before the ſaid P
may by the ſaid Proviſo keep his Poſſeſ
by Force, 4 & 5 *P.* & *M. Dyer* 141.

Lawful Poſſeſſor clearly removed.

Likewiſe, if he that is a juſt and law
Poſſeſſor of Lands, by the Space of 20 Y
together, be once clearly and wholly
moved from the Poſſeſſion of the ſame La
he cannot come again with Force, and M
titude of People to put himſelf in Poſſeſ
thereof, and detain the ſame with Fo

May not come again with Force.

becauſe his Poſſeſſion was interrupted: N
ther in this Caſe, if the Party be indic
of a Forcible Entry according to the
tute 8 *H.* 6. ſhall he be relieved touching
Reſtitution by the ſtat. 31 *Eliz.* for that
had not the Occupation, nor had be
quiet Poſſeſſion by the Space of three wh
Years together, of the ſame Lands next
fore the Day of ſuch Indictment found

But if a Man be ſeiſed of a lawful Poſſeſ- Three Years lawful Poſſeſſor may detain againſt all Perſons.
n by the Space of three whole Years to-
ther of any Land without Interruption,
may, it's ſaid, keep his Poſſeſſion by
rce againſt all others, and he is neither
be removed from his Poſſeſſion by a Ju-
ce of Peace, tho' it be found by Inquiſiti-
that he held by Force, nor yet by an
tion of Forcible Entry, upon Stat. 8
6.

But 'tis otherwiſe of a Diſſeiſor, or of a *Aliter* of a Diſſeiſor, or one that cometh in by wrongful Title.
an that cometh to Land by a wrongful
d unlawful Title; for if he hath detain-
the Land by Force three Years, or twen-
Years, he may be indicted by vertue of
e Stat. 8 *H.* 6. before a Juſtice of Peace,
forcible detaining the ſame Land, and
at being found, the Juſtice is to reſeiſe
e Land, and to award Reſtitution to the Reſtitution.
rty diſſeiſed or expelled thereof, and alſo
e Diſſeiſor ſhall make Fine and Ranſom
the King; but the Party may not have
Action of Forcible Entry upon this Sta-
te, becauſe he hath permitted the Diſ-
ſor to gain three Years Poſſeſſion upon
m. *Vide Pult. de Pac.* 36. *Sect.* 12. 3 & 4
& *M. Dyer* 141. 22 *H.* 6. 18. *Fitz. N. B.*
9. 14 *H.* 7. 28. It's ſaid, the Indictment
ght to ſay *adhuc extratenet*; *Pult.* 38. *Adhuc extratenet.*
11. 21 *H.* 6. 5. 14 *H.* 6. But no Reſtitution,
the the putting out be not found by In-
iſition. Juſtices of *B. R.* may reſtore up-
Indictment removed before them.

Yet it's ſaid, one Juſtice of Peace cannot Where no Reſtitution by one Juſtice.
ſtore upon an Indictment before them,
or Seſſions of Peace, unleſs upon Indict-
ent found at Seſſions. Alſo, it ſeems Ju-

ſtices of Gaol-Delivery, and alſo of Oyer and Terminer, cannot reſtore. *Hale Pl. C.* 140.

Superſedeas. If there be Error, Reſtitution may be ſuperſeded by the ſame Juſtice; before executed and after it is executed, Reſtitution may be in *B. R.* upon the Indictment quaſhed. *Hale Pl. Cor.* 140.

Certiorari. That Reſtitution may be ſtayed by *Certiorari* out of *B. R.* alſo by quaſhing the Indictment, or by pleading thereunto, which is nevertheleſs in Diſcretion. *Id.* 141.

Force found, and no Reſtitution. Where the Force is found, and no Reſtitution, becauſe not the ſame Perſon who was put out, and had only a Poſſeſſion in Law, yet the Offender may be puniſhed by Impriſonment and Fine to the King, for that his Forcible Entry he hath broken the Peace. *Pult.* 37. *Sect.* 14.

Precept for a Jury. The Form of a Precept to the Sheriff to return a Jury. *Id.* 35. *Pl.* 7.

The Form of an Inquiſition on Forcible Entry. *Id.* 36. *Sect.* 8.

A Warrant to the Sheriff to make Reſtitution. *Id.* 36. *Sect.* 9.

Mittimus. A *Mittimus* to ſend to Gaol ſuch as do hold Land by Force. *Id.* 37. *b. Sect.* 15.

Action. Of an Action in Forcible Entry, upon 8 *H.* 6. and that the Writ muſt be *Vi & Armis. Id.* 38. *Sect.* 17, *&c.*

Rent. Concerning Forcible Entry of a Rent or Common. *Id. Sect.* 21.

Writ. Of a Writ of Entry, upon 5 *R.* 2. *Id.* 39. *Sect.* 24.

Aſſize. Of a ſpecial Aſſize of Nuſance, for turning a Water-Courſe by Force. *Ibid.*

That Not Guilty is a good Plea, but here the Defendant pleads ſpecial Matter, muſt traverſe the Entry with Force; yet Iſſue ſhall be tried upon the ſpecial Mat- and not upon the Force, and the finding the ſpecial Matter will charge or diſcharge Defendant of Force. *Ib. Sect.* 26. Pleas. Trial.

See Riots, Routs, *&c.*

Indictments of Forcible Entry.

, For Indictments of Forcible Entry in- Lands. *Weſt. Preſ. of Fines*, &c. 114. Lands.

. *Simile* into a Meſſuage, and expelling Owner. *Id.* 115, 116, 250. Meſſuages.

. *Simile* and making Aſſault. *Id.* 276. Aſſault.

. For a forcible Entry into Meſſuages and nds. *Weſt.* 337. 2 *Cro.* 19. 41. Meſſuages and Lands.

. *Simile*, by the Command of others. 314. By Command.

. Againſt Malefactors in the King's Park. *Ent.* 263. *Co. Ent.* 362. Parks.

. Againſt Hunters in Parks or Forreſts. 126, 127, 128, 278. Forreſts.

. The like in Warrens. *Id.* 96. Warrens.

. The like in a Cloſe. *Id.* 273. Cloſes, *&c.*

. See *Dalton's Juſtice*, for Indictments orcible Entry. 521, 522.

hat the Court will not quaſh an Indict- nt of Forcible Entry, after a Verdict found n the Indictment againſt the Defendant, ore hearing of both the Parties concern- in the Cauſe; for that the Court hath ard to Verdicts, and will not make them fruitleſs Quaſhing Indictments after Verdict.

fruitleſs without very good Cauſe ſhew *Stiles Pract. Reg.* laſt pub. 529.

Simile of Entry into a Church.

Upon a Motion to quaſh an Indictm of Forcible Entry into a Pariſh-Church, the Parſonage-Houſe, it was held, That Indictment was as well within the Stat *H.* 6. as that of *R.* 2. 1 *Lev. Rep.* 90.

Pro Corpore Com.

In a particular Inquiſition upon an Indi ment for forcible Entry, in mention of Jurors to be charged, *ad, &c.* need not *pro Corpore Com. Shower's Rep.* 272.

Actions upon the Stat.

ſſ. Action upon the *Stat.* 5. *R.* 2. aga forcible Entry. *Raſt. Ent.* 353, 354. *Reg.* 182, 289. *Vet. Intrac.* 218, 237. *Co.* 44, 46, 315, 316. 3 *Brownl.* 478. *Thomp.*

Forfeitures.

In Manſlaughter. By *Felo de ſe.*

GOODS forfeited in Manſlaugh *Vide* Indictment.

No Forfeitures of a *Felo de ſe* accrues fore an Inquiſition taken and retu 1 *Saund. Rep.* 275.

Pardon.

By a bare Pardon of all Forfeitures, Thing forfeited is not reſtored. *Id.* 362,

For Forfeitures in Felony and Treaſon *Vide Pulton de Pace, fo.* 214, 215, &c. Forfeitures.

Forgery, Perjury, and Subornation, Maintenance, Champarty, Embracery, &c.

A Forger of false Deeds signifieth, in the Common-Law, either him that fraudulently maketh and publisheth false Writings to the Prejudice of any Man's Right, else the Writ that lieth against him that committeth this Offence. *Fitz. N. B. fo. 96. Cowel's Interp. verb. Forger*, &c. Forger of false Deeds, what.

By the Statute of 5 *Eliz.* 14. If any alone, or with others, shall willingly, subtilly and deceitfully forge or make, or cause to be forged or made, any false Deed, Charter, or Writing sealed, Court-Roll, or Will in Writing, to the Intent that the Freehold or Inheritance of Lands, or the Right or Title thereof may be troubled, defeated, or charged, or shall publish or shew forth in Evidence any forged Writing as true, knowing the same to be false and forged, and shall be thereof convicted upon an Action of Forgery of false Deeds (to be founded upon this Statute) at the Suit of the Party grieved, or otherwise, shall pay to the Party grieved double Costs and Dammages, to be assessed in the Court where such Conviction shall be, and shall be set upon the Pillory in some Market-Town, or other open Place, and there have both his Ears cut off, and also his Nostrils slit and seared with an hot Iron; he shall also forfeit to the Queen, her Heirs and Successors, *Stat.* 5 *Eliz.* 14. against Forging. Publishing. Double Costs. Pillory. Ears cut, *&c.* Forfeiture.

ceſſors, the Iſſues of his Lands, and ſuff perpetual Impriſonment during his Life And the ſaid Coſts and Dammages ſhall b firſt levied upon the Goods and Iſſues of th Lands of the Offender, notwithſtanding th Queen's Title thereunto. *Vide Hob.* 97. *Inſt.* 103, 169. 13. *Co.* 34, 35. *Dyer* 288, 30 323.

Forging of Leaſes, &c. For ſuch Forging, *&c.* of a Leaſe fo Years, of Lands (not Copyhold), or of a Annuity, Obligation, Bill, Acquittance, Re leaſe, or other Diſcharge of any Perſon Thing; the Offender ſhall pay double Co to the Party grieved, to be aſſeſs'd as before be ſet upon the Pillory, loſe one of his Ea and ſuffer a Years Impriſonment witho Bail. *Vide Godb.* 62. *pl.* 75. 2 *Brownl.* 49.

Remedy for Coſts. The Party grieved may have his Remed for his double Coſts and Dammages by origi nal Writ out of Chancery as in caſe of Tre paſs, or by Bill in the King's Bench, or i the Exchequer, in which Suit no *Eſſoin*, & ſhall be allowed.

Not twice puniſhed. Howbeit, he that is once puniſhed for h Offence, ſhall not after be impeached for th ſame; and albeit the Plaintiff's Releaſe o Diſcontinuance of Suit may diſcharge hi own Remedy, yet the reſt of the Puniſhmen ſhall be nevertheleſs inflicted by Judgment o Command of the Court.

Second Offence Felony. The ſecond Offence is Felony witho Clergy, whereof the Offender being convi cted or attainted, he ſhall forfeit his Land and Goods, as in other Caſes of Felony, ſa

Saving, *&c.* ving to all other Perſons their Right, *&c.* nei ther ſhall ſuch Conviction or Attainder ex tend

d to Loſs of Dower, or Diſinheriſon of ir. *Vide* 3 *Inſt.* 46.

Juſtices of *Oyer* and *Terminer* and Aſſize, their Seſſions, ſhall hear and determine ſe Offences. *Vide* 9 *Co.* 118. *Cro. Eliz.* 87, 1. — Offences determined.

And by this Statute, there is a Repeal of other Statutes made againſt Forgery. *Vide Co. fo.* 50. *Dyer* 323. — Statutes repealed.

As to the forging a cuſtomary Book, or ll of a Manor. *Vide* Dyer. 15 *El.* 322. — Cuſtomary Book.

Concerning the King's Pardon of Forgery, 15 *Eliz. Dyer* 323. 5 *Co.* 50. — Pardon.

Concerning the forging of a Teſtament. *Eliz. Dyer* 302. — Teſtament.

Of inſerting more in a Will than is dire- d. 12 *Eliz. Dy.* 288. — Will.

Where one ſhall have an Action of For- y, tho' he hath but a Right to the Land. *ton de Pac.* 45. *b. Sect.* 18. — Action upon a bare Right.

Where no Title, no Action of Forgery, in reſpect of a Poſſibility. *Id.* 46. *Sect.* 19. — No Title no Forgery.

Concerning forging of a Deed touching ntenants Land. *Id. S.* 20. — Jointenants.

Where one ſealeth a Deed by anothers mmandment. *Id. Sect.* 21. — Sealing.

Where one forgeth, and another publiſh- . *Id. Sect.* 22. — Publiſhing.

Concerning Forgery, by antedating of a ed. *Id. S.* 23. — Antedating.

Concerning the getting other Mens Goods counterfeit Tokens or Letters, contrary *Stat.* 33 *H.* 8. 1. *Id.* 46. *Sect.* 24. — Counterfeiting Letters, *&c.*

Of calling ſuch ſuſpected Perſons and Of- ders before the Juſtices, the Puniſhment ereof may be by Impriſonment of Body, ing upon the Pillory, or otherwiſe, by any — Their Puniſhment.

any corporal Pain, (except Pain of Dea
as ſhall be unto him or them limited,
judged, or appointed, by the Perſon and P
ſons before whom he ſhall be convicted,
ving to the Party grieved by ſuch Dee
ſuch Remedy by way of Action, or oth
wiſe, of and for the ſame Money, Goo
Chattels, Jewels, or other Things, ſo
tain'd, as he might have had if this Act h
never been made. *Id.* 46, 47. *Sect.* 24, 2

Remedy by Action.

Forging a Teſtimonial.

Concerning the forging of a Teſtimon
contrary to the *Stat.* 5 *Eliz. ca.* 7. the P
niſhment whereof is to be whipped as a V
gabond. *Id.* 47. *Sect.* 26.

Forging Exchequer Bills.

By *Stat.* 5 *Ann. cap.* 13. for making
Exchequer-Bills upon the Rates and Du
granted upon Houſes, *&c.* If any Per
ſhall forge any ſuch Bill, or Endorſem
thereon, or knowingly tender the ſame
Payment, with Intention to defraud, ſu
Perſon convict ſhall ſuffer as a Felon wi
out Benefit of Clergy. The like Penalty
upon the late Act 7 *Annæ Reg.* for enlarg
the Capital Stock of the Bank of *Engl*
pa. 181.

Forging Entries of Deeds in *Weſt-Riding* of *York*.

Alſo by Act 5 *Ann. cap.* 18. for inroll
Bargains and Sales in the *Weſt-Riding* of *Y*
If any Perſon ſhall forge any Entry, *&c.*
ſhall be liable to the Penalties, *cap.* 14. agai
Forgers of falſe Deeds, *&c.* And if
Perſon ſhall forſwear himſelf in ſuch Ca
he ſhall incur the ſame Penalties, as if
Oath had been in any Court at *Weſtmin*
The like upon the late Act 7 *Ann.* for re
ſtring Deeds, *&c.* of Lands in the Cou
of *Middleſex*. *See the Acts.*

And *Middleſex*.

Precedents.

f. Indictment for counterfeiting an In- Indenture.
nture. *West. Pref.* of Fines, *&c.* 119.
f. *Simile* of a Statute Merchant. 40 *Aff.* 32. Stat. Mer-
also *Tab. Offic Clerici Pacis, Tit.* Forgery, chant.
Bolton's *Juſtice, Tit. eund.*

Actions by the Party grieved.

f. Action upon the Statute for Forging Deeds.
Deeds, to diſturb the Plaintiff's Title in
nds. *Raſt. Ent.* 356. *Vet. Intrac.* 58. *Rob.*
435.
f. The like of a forged Writing. *Raſt.* Writings.
356, 486. *Theſ. Brev.* 64, 89.
f. Upon forging a Feoffment to defraud
editors. *Rob. Ent.* 441.
f. An Action upon the Caſe, for Forging Indenture.
Indenture to diſturb the Plaintiff in
nds bought, and no Mention made of
Statute. *Raſt. Ent.* 357.
f. The like for an Executor concerning Will.
rging of a Will. *Id.* 358.
f. For Forging a Bond *ſur Stat.* 5 *Eliz.* Bond.
mpf. 80. (*poſtea*)
f. Upon the Statute of 5 *Eliz.* for Forging Leaſe.
Leaſe. *Id.* 59.
f. *Simile* againſt an Attorney. *Rob. Ent.*
0, 435.
f. An Information in the Exchequer up- Teſtament.
the ſaid Statute, of publiſhing a falſe Te-
ment for the Defendant, of Lands deviſed

to

to him, whereas the Lands descended to the Plaintiff. *Id.* 359.

Pleas in Bar. *ff.* For Pleas in Bar of Forgery. *Pulton de Pac.* 45. *Sect.* 17. *Rast. Ent.* 356, 357, 358. *Vet. Intrac.* 58, 59, 199.

Bond. *ff.* For Forging an Obligation. 1 *Lutwich* 190.

Perjury and Subornation.

Suspicion in Sheriffs and Officers. These Offences are largely treated of in *Pulton de Pac. fo.* 47. *b.* 48, 49, *&c.* where he begins with the Causes of Suspicion in Sheriffs and other Officers, relating to the impannelling of Juries. *Id.* 48. *Sect.* 3.

Jurors honest. That every Juror must be an honest and lawful Man, and what Challenges the Law doth allow against Jurors suspected. *Ibid. Sect.* 4.

Witness. That a Witness in the Cause in question cannot be a Juror in the same Cause. *Ibid. Sect.* 5.

Suspicion of Perjury. Perjury suspected in a Juror, by delivering his Verdict beforehand. *Ibid. Sect.* 6.

In Jurors. The like suspected in a Juror, by living at the Charge of one of the Parties. *Ibid. Sect.* 7.

Arbitrator. The like where he had been an Arbitrator for one of the Parties in the same Cause. *Ibid. Sect.* 8.

Combination Where Perjury is suspected upon Combination between Men, that one of them will take another's Part, be his Friend and assist him in all Causes whatsoever. *Id.* 49. *Sect.* 9.

Where

Where Perjury may be ſuſpected; if one the Parties and a Juror be at Suit in w. *Id. Sect.* 10. Suit in Law.

Where Perjury may be ſuſpected, for t the Juror paſſed againſt him before. *Sect.* 11. & *Stat.* 25 *E.* 3. 3. A Juror formerly.

Where Perjury may be ſuſpected in a or, in regard of the Parties being in jection or Government of a Court, ndred, or Court-Leet, *&c.* of the Plain- or Defendant. *Ibid. Sect.* 12. Subjection.]

Where Perjury may be ſuſpected in a or in reſpect of Kindred, Alliance, or ſir, or of the Parties being Godfather he Juror's Child, *&* *e contra. Id.* 13; which Cauſes as above, it's ſaid, if the or be challenged, he ſhall be drawn. Kindred, *&c.*

Where Perjury may be ſuſpected, in re- d of the Juror's Ignorance of the Cauſe, t of Hundredors, or want of the View he Land in queſtion. *Id.* 50. *Sect.* 14. *Stat.* 27 *Eliz.* 6. Ignorance.

Where Perjury may be ſuſpected in Ju- , in regard of their Poverty, and be- impannelled to paſs out of their own nties. *Ibid. Sect.* 15. Alſo concerning rs to try Felonies in Corporate Towns, in *London*, and in the Sheriffes Turn, for Riots and Forcible Entries, *&c.* *&* *Stat.* 21 *Ed.* 1. *&* 3 *H.* 5. 5. *&* 23 3. Poverty, *&c.* Towns Corporate.

oncerning the Judgment in and at mon Law, of a Jury proved perjuried. o, *&* 51. *Sect.* 16. Judgment againſt Jury.

Simile upon an Attaint.

Concerning the Judgment againſt a Pe tit-Jury attainted in *London* of giving falſe Verdict. *Ibid. Sect.* 17. Alſo concern ing an Attaint where the Thing extended to 40 *l. &c. Ibid. Et vide ante* Attaint Jurors, *& Stat.* 11 *H.* 7. 21. 23 *H.* 8. *an.* 13 *Eliz.* 25.

Puniſhment by *Decies tantum.*

Concerning the Puniſhment of a Juro by *Decies tantum*, i. e. Ten times the Valu where by his receiving Money, *&c.* it ſuſpected he meant to commit Perjury *Ibid. Sect.* 18. The like it is of thoſe which be Imbracers to lead and procure ſuch In queſt in the Country to make a Gain an Profit thereof. *Id.* 52. *& Stat.* 11 *H.* 7. 34 *E.* 3. 8. 38 *Ed.* 3. 12.

Upon a Meaning only.

Inqueſt in *Wales.*

Concerning the Puniſhment of Perjur committed by an Inqueſt in *Wales. Ibi Sect.* 19. *& Stat.* 5 *Eliz.* 9. 29 *Eliz.* 5.

5 *Eliz.* 9. againſt Perjury.

And now we come to the general Sta tute of 5 *Eliz. cap.* 9. againſt Perjury wherein we will firſt take notice of th Proviſo therein to enforce Witneſſes to a pear at Trials, by which it is provide That no Perſon or Perſons, being ſerv

Witneſs ſerv'd with Proceſs neglecting to appear.

with Proceſs out of any of the Courts Record within this Realm or *Wales*, to t ſtifie as a Witneſs, (being tendred conv nient Charges, and having no reaſonab Let) ſhall therein make Default, in pain

Penalty.

forfeit to the Party grieved 10 *l.* and beſi to yeild him ſuch further Recompence the Judge of the ſame Court ſhall thi fit, according to the Dammage ſuſtaine which ſaid Sums ſhall be by him recover in any Court of Record by Action of De in which no Wager, Eſſoin, *&c.* ſhall be

lowe

wed. See the Stat. & *vide* 1 *Leon.* 122. *Marsh* 18.

That none ſhall ſuborn a Witneſs to give eſtimony in any Court of Record, concerning any Lands, Goods, Debts, or Damages, in pain of 40 *l.* And if the Offender being convicted thereof) hath not wherewithal to ſatisfie the ſaid Forfeiture, he ſhall ſuffer ſix Months Impriſonment without Bail, ſtand upon the Pillory one whole Hour the ſame or next Market-Town where the Offence was committed, and to be ever after diſabled to give Teſtimony in any Court of Record, until the Judgment given againſt him be reverſed by Attaint or otherwiſe. *Idem Stat. Vide* 3 *Inſt.* 163, 164, 166. 3 *Bul.* 147. 2 *Leon.* 12. 198. 3 *Leon.* 200, 201. *Coke Pla. fol.* 302, 367. *Raſt. Pla.* 480, 481. *Goldſb.* 191. *Pl.* 140. Subornation of Witneſſes. Puniſhment.

That he that commits wilful Perjury, ſhall forfeit 20 *l.* ſuffer ſix Months Impriſonment without Bail, and be ever after diſabled to give Evidence, until the Judgment given againſt him be reverſed, as aforeſaid. And more alſo, if he hath not where withal to discharge the Fine (in the County) the Sheriff or (in a Corporation) the Head-Officer, ſhall cauſe him to be ſet upon the Pillory in ſome Market-place, and to have both his ears nailed. *Idem Stat. Vide Coke Pla.* 164, 165, 166. Forfeiture by him that commits wilful Perjury. Puniſhment.

The Forfeitures aboveſaid ſhall be divided betwixt the Queen and the Party grieved, and the Judges of the Courts where ſuch Offences ſhall happen to be committed, Juſtices of Aſſize, Gaol Delivery, and of Peace, have Power to hear and determine the ſame Forfeitures divided.

Proclamation. Offences; and that this Act ſhall be proclaimed at every Aſſize.

To what Courts it ſhall not extend. This Act ſhall not extend to any Court Eccleſiaſtical, but that they may there proceed as in Times paſt; nor to reſtrain the Power of the Council of *Wales*, or in the North, to puniſh heinous Perjuries; but that they may proceed as formerly, ſo as for the ſaid Offences they inflict no leſs Puniſhment than by this Statute ordained.

Perjury in Bankrupts. Perjury puniſhed in Bankrupts by Stat. 1 *Jac.* 15.

Vide 4 & 5 *Ann. cap.* 17. & 5 *Ann. cap.* 22. *Vide ante* Clergy.

Upon Indictments. Perjury committed upon an Indictment of Riot. *Vide Pult. de Pac.* 54. *Sect.* 28. & 5 *Co.* 99.

Simile. Perjury upon an Indictment of Felony. *Ibid.*

Upon a Suggeſtion. *Simile* in proving a Suggeſtion for a Prohibition. Stat. 2 & 3 *Ed.* 6. 13. 13 *H.* 7. *cap.* 1. 7 & 8 *Eliz. Dyer* 243.

How ſued in *Canc.* How a Bill of Perjury may be ſued in Chancery for Perjury in the ſame Court. *Pult.* 54. *Sect.* 30. 12 *Eliz. Dyer* 288.

How in Spiritual Court, *&c.* Where Perjury ſhall be puniſhed in the Temporal Court, and where in the Spiritual. *Pult. de Pac.* 54. *Sect.* 31. 4 *Co.* 20. *in* Palmer & Thorp.

Precedents.

Anſwer. ſſ. An Indictment of Perjury in an Anſwer to a Bill in *Cheſter. Weſt. Preſ.* of Fines *&c.* 241. *Vide Offic. Clerici Pacis de* Perjury

[ſſ *Simile*

Ass. Simile in a Depoſition to Interrogatories. *Id. Weſt. p.* 160, 161. — Depoſition.

Ass. Simile in a Depoſition upon a Trial at *Niſi Pri.* in *B. R.* 1 *Brown's Ent.* 100. *Thompſ.* 1. *Winch. Ent.* 349.

Ass. For Subornation of Perjury upon a Teſtimony in *Chancery*, concerning the altering of a Will. *Co. Ent.* 362. — Subornation.

Ass. Simile againſt a Juror for Bribery. *Weſt.* 130, 131. *Raſt. Ent.* 146. — Bribery.

Ass. The like againſt one who took Money to be a Juror to acquit a Felon. 40 *Ass.* 43. — *Simile.*

Ass. Action in Debt, upon the Statute againſt a Witneſs, who did not appear before the Sheriff to teſtify upon a Writ of Inquiry, being ſerv'd with a *Subpœna. Aſt.* 90. — Debt againſt a Witneſs.

Ass. The like for not appearing at the Aſſizes. 1 *Brown's Ent.* 91. — *Simile.*

Ass. Simile Verſ. Attorn. 2 *Mod. Intran.* 172. — *Simile.*

Ass. Action upon the Statute 5 *Eliz.* for 10 *l.* for committing a voluntary Perjury. *Thompſ.* 92. *Bro. Rediviv.* 470. — *Simile* for Perjury.

Ass. Non Cul. in Perjury, and Judgment thereon. *Hanſ. Ent.* 119. — *Non Cul.*

Ass. Judgment for the Plaintiff upon a Verdict at the Bar, upon a Statute of Perjury. *Townſ. Judgm.* 10, 11. — *Indic.*

Vide Frauds *and* Perjuries.

Freſh Suit.

WHAT it is, how determinable at the Diſcretion of the Judges. *Kelyng's* 96.

G.

Gaols, Gavlers, Gaol-Delivery, &c.

The Power of the Judges, *&c.*

CConcerning Gaol-Delivery, and the Power of the Judges thereof, and their Associates. *Hale Pl. C.* 158, *&c.* Also in what Matters, Justices of Oyer and Terminer have a like Authority and concurrent Jurisdiction *Ibid.*

To command a Reprieve.

That altho' the Commission of Gaol-Delivery determine with their Session, after they are gone, they may command a Reprive or Execution.

Justices of Oyer and Terminer.

More particularly concerning the Justices of Oyer and Terminer, of their Commission, Associates, Determination of their Commission, *&c. Id.* 161.

Their Power suspended.

That a *Supersedeas* suspends their Power and a *Procedendo* revives it, *&c.* And concerning a special Commission of Oyer and Terminer to hear and determine Treasons *&c. Id.* 162.

Forfeiture by Gaoler.

If a Gaoler for Life makes a Forfeiture of his Office, he in the Reversion shall have the Advantage of it. 2 *Lev. Rep.* 71.

Both Gaoler and Judge.

Where a Man may be both Gaoler and Judge. *Show. Rep.* 162.

Prisoners for Felony.

That Prisoners for Treason and Felony ought to be sent to *Newgate*, not *New Prison. Kel. Rep.* 2.

Directed

Directed that Gaolers ſhould make more perfect Kalenders. *Id.* 3. And to certify Cauſes of Impriſonment, and take Notice of the ſame. *Id.* 4. Gaolers to make Kalenders.

Vide Oyer *and* Terminer.

See after *Habeas Corpus* to a Gaoler.

Vide Priſon-Breaking.

Vide Impriſonment.

Goldſmith.

Vide Clipping Money, *&c.*

WHERE a *Goldſmith* that falſified Plate was fined 100 *l.* and adjudged to and in the Pillory three Days, and alſo was for-judged of his Trade that he ſhould not uſe that Trade again as a Maſter-Workman. *Kel. Rep.* 39. *Goldſmith* falſifying Plate.

Goods.

Vide Burglary.

Market Overt, Reſtitution, *&c.*

WHether Reſtitution of ſtolen Goods be grantable to the Proſecutor upon the Statute 21 *H.* 8. *cap.* 11. in caſe the Goods were ſold in a Market-Overt? See after, Reſtitution. Whether there ſhall be Reſtitution of ſtolen Goods.

Where Goods ſold to a Broker does not alter the Property. *Vide Tit.* Broker. Property not altered.

Stolen by Porter, *&c.* Where the Porter or Carrier steals the Goods delivered to carry. *Vide Burglary.*

From Lodgers. Where taken by the Owner out of his Lodgers Chamber. *Ibid.*

By Lodgers. Where by a Lodger that hires them *Vide ante Tit.* Clergy, *&c.*

Forfeited and undervalued. Where Goods forfeited are undervalued and the Jury amerced. *Kel. Rep.* 84.

Grants by the King.

Of the Goods of *Felo de se.* IF the King grants Goods and Chattels of Felons, the Grantee shall not have Goods and Chattels *Felonum de se.*

What the Granted shall not have. And if the King grants the Goods and Chattels *Felonum de se*, the Grantee thereby shall not have the Debts due to such Felons: 1 *Saund. Rep.* 274, 275.

Pleading the King's Grant. That a Grant by the King ought to be pleaded directly, *quod conceſſit*, and not by *Teſtatum exiſtit. Ibid.*

FH
MVSEVM
BRITANNICVM

H. Habe

H.

Habeas Corpus.

Vide Bail.

T vide. Kel. Rep. 4. ordered, *&c.* That if any *Habeas Corpus* come to receive Priſoner from another Gaol, the Gaoler take notice of the Offence for which he ood committed at the other Gaol, and to form the Court, that if he ſhall happen be acquitted, or have his Clergy, he ay yet be remanded to the former Gaol, there be Cauſe. **From one Gaol to another.** **Priſoner remanded.**

Again, That if a *Habeas Corpus* come to e Gaolers to remove a Priſoner, that with e Priſoner they alſo certifie the Cauſe r which he ſtood there committed, it beg found by Experience, that by Colour *Habeas Corpus* to receive and remove Friners, many notorious Offenders do eape. *Ibid.* **Gaoler to certifie the Cauſe.**

Hereſie.

Oncerning it, as a Capital Offence. *Hale Pl. C.* 3. **Hereſie.**

Highways

High-Ways.

Vide Indictment.

Of enlarging and amending the them.

CConcerning their being enlarged, a amended, and upon whom the Char of Repair lies. *Hale Pl. C.* 144.

View by Juſtice.

The Form of a Conviction on view, a Juſtice, for being unrepaired, and an O der thereupon. *Kel. Rep.* 34.

What may be traverſed upon ſuch a Conviction.

That upon ſuch a Conviction, the D cay of the High-way cannot be traverſ but they may plead that ſome other Perſ ought to repair it, and traverſe that th ought not. *Ibid. & 2 Saund. Rep.* 160, 1 4 *Mod. Rep.* 38. 49. See the Abridgm of the Statutes, Tit. *High-ways. Vide* I dictment.

Homicide.

Ex Neceſſitate.

IN one Reſpect, it is ſaid to be *ex Ne ſitate* in reference to Juſtice, as in t Execution of Juſtice, and in Advanceme of Juſtice. *Hale Pl. C.* 35.

Private Intereſt.

In another Reſpect, it's ſaid to be groun ed upon private Intereſt.

I.

. In Execution of Juſtice, the Judgment ht to have been given by one that hath ſdiction in the Cauſe. *Ib.* — In Execution of Juſtice.

. It muſt be done by a lawful Officer; — Officer.

. It muſt be done purſuant to the Judg- t. *Ibid.* & 36. — Judgment.

omicide in Advancement of Juſtice in ſes Criminal and Civil. As where a Fe- reſiſts, breaks Way, or will not obey the cers; ſo in Civil Cauſes, where the Par- eſiſts, and ſtrives with the Officer, tho' re a Man only flies from the Execution a Civil Proceſs, the Sheriff, *&c.* may kill him. *Vide* 36. 37. — In advancement of Juſtice, and Party reſiſts.

omicide by a Perſon who purſues upon ue and Cry, or otherwiſe to arreſt a n that flies. 36. — Purſuing Hue and Cry.

by a Gaoler, where a Priſoner aſſaults . 37. — Aſſaulting Gaoler.

where Rioters, or forcible Enterers, ds in Oppoſition to Juſtices lawful War- , and one of them is ſlain, no Felony. — Rioters, *&c.*

a Keeper, or Parker, may kill Hun- if they fly or defend themſelves. *Ib.* — Hunters.

ut as to ſuch *Homicides*, there muſt be no ce coloured under pretence of Neceſſity, f it be, it alters the Caſe, and makes it der. *Id.* 38. How the Party that did Fact muſt be arraigned, the ſpecial ter upon not Guilty found, and then Party is to be diſmiſs'd without a Forfei- , or Pardon purchaſed. *Ibid.* — No Malice. — How the Party muſt be arraigned and diſmiſs'd.

omicide ex Neceſſitate, grounded upon ate Intereſt, are of two Kinds, one reof is juſtifiable, and conſequently in- duces — *Ex Neceſſitate*, grounded upou private Intereſt.

duces no Forfeiture at all; As ſhooting,

House-Burners. killing a Man that comes to burn a Hou

So if a Woman kills a Man that aſſaulteth

Raviſhers, Robbers, &c. raviſh her, no Felony; ſo killing of Thie

that aſſault to rob a Man in the Highway,

in his Houſe, by the Maſter or Servant. *H*

P. C. 39.

Claiming Title. If one comes to enter a Houſe, claimi

Title, and the Owner kills him, 'tis Ma

ſlaughter. *Id.* 40.

Where an Aſſault in a Houſe upon t

Owner was not to rob, but to beat hi

Se Defendendo. there it will only be *ſe defendendo*; a

there his Goods are forfeited, and a Pard

of courſe to be granted. *Ib.*

Abettors. See 2 *Jones, Rep.* 55. where it is ſa

the Preſence and Abetment in *Homic*

done by another, makes a Man guilty

that Caſe, as well as in the Caſe of Murd

Se Defendendo. *Se Defendendo* is the Second kind of Hom

cide *ex Neceſſitate*, grounded upon priv

Intereſt, and is Excuſable: But tho'

ſaves the Life, yet the Goods are forfeit

H. P. C. 41.

It muſt be an inevitable Neceſſity, and

Giving back to the Wall, &c. moſt Caſes the Party muſt give back to t

Wall, unleſs the Aſſault be ſo fierce, t

giving back would endanger his Life. *I*

It muſt be in his Defence, otherwiſe

Manſlaughter. may be Manſlaughter; as if the Mor

Wound was given before, *&c. Ib.*

If *A.* upon Malice Pretenſe ſtrikes *B.* a

Murder. then flies to the Wall, and there in his o

Defence kills *B.* this is Murder. *Id.*

Vide Kel. Rep. 58.

What may or may not be done *se defendo*, *Vide Kelyngs Rep.* from 128, to 130. *Mawgridge's* Case. *Mawgridge's Case.*

House Burning, Vide *Arson.*

Note, That by the Act *for the better preventing Miſchiefs that may happen by Fire*, 6 *Ann. cap.* 31. it is enacted, That any Menial or other Servant, through Negligence, ſhall fire any Dwelling-Houſe, being lawfully convicted by one or more Witneſs, before Two Juſtices of the Peace, ſhall forfeit and pay 100 *l.* to the Church-Wardens of the Pariſh where the Fire ſhall happen, to be diſtributed amongſt the Sufferers as the Church-wardens ſhall think fit: and in caſe of Non-payment, ſuch Servant, by Warrant of Two Juſtices, ſhall be committed to ſome Work-houſe for Eighteen Months, and kept to hard Labour.

House fired through Negligence of a Servant.

Penalty.

Then follows a Clauſe for Partition-Walls between Houſes in *London*, *&c.*

Partition-Walls.

Alſo a Clauſe, as well for the Conſtables aſſiſt, as to cauſe the People to aſſiſt in extinguiſhing of Fires, and to prevent ſtealing of Goods.

Conſtables to aſſiſt.

Then a Clauſe of Exemption to this Purport, *viz.* That no Action ſhall be maintained againſt any, in whoſe Houſe or Chamber any Fire ſhall accidently begin; and that if an Action be brought for any thing done in purſuance of this Act, the Defendant may plead the general Iſſue, and give this Act in Evidence; and if Plantiff be nonſuit, diſcontiue, or a Verdict be againſt him, the Defendant to have treble Coſts.

No Action upon an Accidental Fire.

A

A Proviſo, That nothing herein ſhall m
void any Agreement between Landl
and Tenant.

With a Proviſo, That ſo much of this
as relates to the Indemnity of thoſe in wh
Houſe any Fire ſhall begin, ſhall contin
for Three Years, and from thence to
End of the next Seſſion of Parliament.

Hue and Cry, Vide Witneſs.

Who may arreſt the Offender.

Upon Hue and Cry, who may arr
the Offender, with the Manner of levyi
Hue and Cry where Felony is commit
or dangerous Stroke given. *Hales Pl. C.*

Want of Purſuit puniſhable.

If the Hue and Cry be well levied, ev
Man may and muſt arreſt the Offend
upon whom it is levied by *Stat. Winchef*
and want of Purſuit is puniſhable by F
and Impriſonment. *Ibid.*

Two Servants robbed, and one takes the Oath.

Two Servants, and each having Mon
in their Poſſeſſion of their Maſters, w
robb'd; one took the Oath according to
Statute of the Robbery, this is not ſufficie
to entitle the Maſter to an Action for
Money in the Poſſeſſion of the other Serva
Show. Rep. 94. *vide eund.* 241. That
Servant muſt be ſworn, and if the Maſ
had been preſent, it had been a Robbery
the Maſter, and *Judict. pro Def.* as to
Money in *C.*'s Cuſtody.

If the Maſter preſent.

Declation upon the Statute.

A Declaration upon the Statute of H
and Cry inſufficient, for that the Plaintiff
not ſhew the Particulars of the Goods tak
and carried away; nor that they were
Goods of him the Plaintiff, but genera
that they were in his Cuſtody. 2 *Saund.* 3

What Persons are Inhabitants within the nt of the Statute. 13 *E.* 1, *cap.* 2. Of and Cry, *Id.* 423. Inhabitants, who they are.

See *Pulton de Pace*, Fol. 147. *&c.* Of Pursuit by Hue and Cry.

Hearsay.

Vide Evidence.

THE Two Witnesses required in Treason, must not give Evidence only by rsay. *Hale P. C.* 262. Not in Treason.

Homicide, (See after *Tit.*)

I. *Im-*

I.

Imprisonment.

Vide Arresting Persons.

Magna Charta, No Imprisonment unless by Law, *&c.*

BY *Stat. M. Ch. c.* 29. No Freeman sha be taken, imprisoned, disseized of h Freehold, or Liberties or free Customs, ou lawed or exiled, nor otherwise destroye unless by legal Judgment of his Peers, or b the Law of the Land. And by the *Sta* 25 *Eliz.* 3. *c.* 4. None shall be taken unl

Nor taken, unless *&c.*

it be by Indictment or Presentment of la ful People of the Neighbourhood in d manner, or by Process made by Writ Or ginal at the Common Law.

No Sergeant at the Mace, Bailiff, or o ther Officer whatsoever, shall convey carry any Person in his or their Custody b

Not to be carried to a Tavern, *&c.* without Consent.

Writ, Process, or other Warrant whatso ver, to any Tavern, Ale-house, or oth Victualling or Drinking house, without th voluntary Consent of the Party. *Stat.* 2 23 *Car.* 2. *c.* 2. *Sect.* 9.

Appellor or Approver by Duress of Imprisonment.

If the Keeper or Underkeeper of a Priso by too great *Dures* of Imprisonment, an by Pain, make a Prisoner that he hath Ward to become an Appellor (or Approver) gainst his Will, and thereof be attainted, he sha have Judgment of Life and Member. *Sta* 14 *E.* 3. *c.* 10. Every Imprisonment take

cen and deemed in Law *Duritia Duret*; ittle Addition to it by the Jaylor is too eat *Dures* in this Caſe. *Co.* 3. *Inſt.* 19.

If a Jaylor keeps the Priſoner more ſtrictly an he ought of Right, whereof he dieth, is is Felony in the Gaoler by the common w and this is the Cauſe; That if a Priſo- r die in Priſon, the Coroner ought to ſit on him. *Id. Ibid.* Where the Priſoner dieth through over-ſtrict keeping.

In all Offences fineable, the Impriſon- ent is only to be until the Fine is paid; the Fine be tendered, there is to be no priſonment at alll 1 *Vent.* 116. Impriſonment till Fine paid.

Vid. Commitment.

Indictment.

here requiſite: Hales Pl. Cor. 198. *By whom:* Id. 201. *Of what Matters:* 203. *Before whom:* Id. 205. *The Form:* 206. *The Proof thereupon.* Id. 208.

(*Words neceſſary.*)

THE Word *Proditorie* neceſſary in all Indictments of Treaſon. *Reding*'s *yal* 8. In all Indictments of Death, the ord *Percuſſit* is neceſſary, except in caſes Poiſoning. *Co. Rep. l.* 5. *fo.* 122. So in pe, *Rapuit*; In Larceny, *Felonice*, Hale C. 207. *Felonice cepit & aſportavit*; *Kel.* p. 82. In Murder, *Murdavit*, for theſe are *Voca- la Artis.* 5 Co. Rep. 121. b. Proditorie. Percuſſit. Rapuit. Murdavit.

Indictment of Manslaughter.

In an Indictment for Manslaughter, it is necessary to be averr'd that it was done voluntarily. *Kelin Rep.* 112. *Id.* 28.

Cuidam Ignoto.

Aiding and Assisting *Cuidam Ignoto* in Treason. *Kel. Rep.* 10.

Contra pacem.

Where it may be *Contra Pacem* of Two Kings. *Id.* 11.

Joint Indictment counted several.

Where a Joint Indictment is accounted several in Law, and the Crime several, and one may be guilty and not another; and therefore the finding one guilty, is no Argument or Presumption that those Jurors will find another guilty. *Id.* 9.

Simile.

Best to join several Criminals in the same Indictment. *Id.* 9. 71.

Time of Fact not Material.

The Time of Fact is not material in Indictments for Treason, and therefore the Juror may find it to be as it was in Truth either before or after the Time laid in the Indictment. *Id.* 16.

County not.

So where the Indictment lays the Treason in one County, yet Evidence of the Fact may be in other Counties. *Id.* 15, 33.

Where must be local.

But where it makes levying War the Treason, 'tis local; *contra* where inserted only as an Overt-Act to prove the Treason. *Id.* 16. *Vide Tit.* Overt-Acts.

Levying War, *&c.*

When it is to be for levying War, and when for Conspiring the King's Death. *Idem* 21.

Felony made Trespass.

And where the Indictment is for Felony yet the Judgment may be for Trespass. *Id.* 29.

Acquitted of Burglary.

Indicted for Felony.

One Indicted of Burglary and Stealing is acquitted, he can't be after indicted for Burglary but may for Felony, in Stealing the Goods of another at the same Time. *Id.* 30. 52.

Where

here if a Master happen to kill his Ser- Servant kill'd by Chastisement.
or a Parent a Child, by chastening them,
ay be said *per Infortunium*. *Id.* 28. *Vide*
Jury.

r Murder of a Base Child, the Indict- Murdering a Base Child.
concludes *Contra Pacem* generally, and
ontra Formam. Statut. *Id.* 32.

ncerning the Preference of Indictments, Indictments preferr'd to Appeals.
where they are more regarded than Ap-
See *Tit.* Appeals. *& Kel. Rep.* 95, 96,

w an Indictment must be laid for rob- For Robbing Houses, *&c.*
Houses and Persons. *Id.* 69, 70.

Indictment lies for Conspiring to do For Conspiring to do an unlawful Act.
lawful Act, altho' the Act is not done.
. Rep. 62. 125. And it is against the
rers, as well as against the Actors that
quitted. *Id.* 126.

ictment at the Sessions of Peace omit- Omissions.
Domini Regis, is ill. *Id.* 175.

ictment, that the Defendant *est com-* *Communis perturbator*, &c.
Perturbator Pacis, communis Oppressor, &c.
but that he is *communis Barectator, Rixa*,
good. *Id.* 299.

arish indicted, who of common Right Of a Parish for a High-way. Not Guilty.
repair a Highway, cannot plead Not
, and give in Evidence that another
to repair. *Show. Rep.* 270. *Vide Tit.*
ways.

particular Person be indicted for not *Simile* by a particular Person.
ing where he is bound thereto, *ratio-*
næ; upon Not Guilty, he may give a-
ing in Evidence. *Ibid. Vide* 1 *Mod.*
12.

on an Indictment of a Parish for an *Simile* of a Parish.
way, if found not an High-way, 'tis
uilty. *Show*, *Rep.* 270.

Indictment of Perjury upon Affidavits.

Indictment of Perjury upon an Affida
Id. 335. What is good Evidence there
Id. 397. The like upon an Affidavit bef
a Commiſſioner for taking Affidavits, a
doth not ſay *Voluntarie*, &c. ill on Er
Id. 190.

For ſhooting with Hail-Shot.

An Indictment for ſhooting with H
Shot, *contra* 2 & 3 *Ed.* 6. found before
ſtices at the Seſſions, and fined. *Id.*
That *vi & Armis* here were needleſs.

For going with a Hand-Gun.

Conviction upon *Stat.* 33 *H.* 8. for
ing with a Hand-Gun, if not taken u
the View. *Q.* If the Juſtices had Au
rity in a ſummary Way. *Show. Rep.*
Vide Juſtices.

For keeping an Ale-houſe.

It ſeems no Indictment lies for keep
an Ale-houſe without Licence. *Id.* 39

For Foreſtalling *Billingſgate.*

An Indictment for Foreſtalling *Bill*
gate. Id. 292. held that *Billingſgate* w
Market Time out of Mind, and ſo the P
was acquitted.

For forcible Entry, and Diſſeizing.

In an Indictment for forcible Entry,
Diſſeizing him of a Tenement, *adtunc &*
hac liberum Tenementum ipſius, *I. S.* Ti
pugnant and ill, for it could not be
Freehold after a Diſſeiſin. *Id.* 272.

Simile.

Pacifice intravit & Vi & Armis diſſei
held void and repugnant. *Ibid.*

Upon preaching Treaſon.

An Indictment lies for Treaſonable W
preach'd in a Sermon. 3 *Mod. Rep.* 5
69. *Vide Stat.* 4 *Ann. cap.* 8. & *Vide Tr*

Miſtake upon Treaſon.

Upon an Indictment for Treaſon, I
præcept' per Curiam quod Vic' venire facer
non omitt' quin caperet, and held ill. S
Rep. 75.

ndictment of forcible Entry, quash'd for Word *passagium*, and saying *possessionat. quodam Termino*, and doth not say *Anno*. 1 *Mod. Rep.* 73. — For forcible Entry quash'd.

f an Act of Parliament creates a new Of-ce, and appoints other Ways of proceed- than by Indictment; yet if there are negative Words, an Indictment lies. 34. — Lies, though otherways directed by Stat.

n Indictment was for these Words, *viz.* henever a Burgess of *Hull* puts on his wn, Satan enters into him. The Words e said to be a scandal to Government, quash'd for ill Conclusion. *Id.* 35. That will lie for such Words for which an ion will not. 3 *Mod. Rep.* 139. *Vide Mod. Rep.* 7. 76. — For Words, and quash'd.

Lies for Words.

s of *Jeofails* helps an insufficient Indict-nt. See after. — Nothelp'd by Stat. *Jeofails.*

Quashing of several Sorts of Indictments Insufficiency, *&c.* 1 *Mod. Rep.* 78. 3 *Mod.* 79, 122, 152, 168, 139. — Indictments quash'd.

Per Sacrum duodecim proborum & legalium minum, were left out, and Indictment ash'd. 3 *Mod. Rep.* 122. Indictment for ting a Cottage, quash'd for the Conclu- (after Verdict.) 4 *Mod. Rep.* 345. — Omission of Words.

t ought to appear in certifying of an In-tment, that the Jury were sworn or rged to present Offences within the ce where the Offence is laid. 1 *Saund.* — Concerning the Jury.

That an Indictment founded solely upon a ute, ought to conclude, *contra formam t. Id.* 250. — Conclusion.

(*Excepted out of Stat.* Jeofails.)

That the Faults in the Proceedings u
Indictments, are excepted out of the
tutes of *Jeofails*. 2 *Saund.* 308. See bef

Preſentav' exiſtit modo & forma. Quaſh'd.

Per Sacramentum 12 *præſentat' exiſtit*
& forma ſequen. Midd. viz. Juratores
Duo Rege preſentant, quaſh'd, becauſe it ſho
have been *preſentat' exiſtit quòd*, &c. and
made *& forma*. 3 *Mod. Rep.* 201.

Upon a Pardon pleaded.

Pardon was pleaded, and Judgment
Defend' eat ſine Die, but being convicted
Manſlaughter, his Goods were forfei
and tho' he was ought of the Court by
Pardon and Judgment, yet the Indictm

Indictment quaſh'd to prevent Seizure of Goods.

was quaſh'd upon a Motion for a Fault i
and this was to prevent the Seizure. *Id.* 2

Per Sacramentum, &c. left out.

Per Sacramentum duodecim proborum et l
lium hommium left out, and Indictm
quaſh'd. 3 *Mod. Rep.* 122. This Ind

Indictment quaſh'd.

ment was for Subornation of Perjury,
perſwading another to ſwear, and doth
ſet forth that the Oath was made tha
might appear that the Thing ſworn
falſe, as it ought to do. *Ibid.*

What Additions muſt be.

That in Indictments, there muſt be an
dition to the Perſon and Place, *viz.* To
Perſon, of what Eſtate and Degree he is;
the Place, *viz.* in what Hamlet, To
Place, and County he liveth. 3 *Mod.*
139. *Vide* Additions.

Fact *in Parochia* ſufficient.

'Tis ſufficient to lay the Fact to be co
mitted *in Parochia*, and without layin
Vill, though Pariſh is an Eccleſiaſtical D
ſion. *Id.* 158.

T

That the Certainty of the Fact ought to be particularly alledged; if for Murder, it muſt be alledged that a Stroak was given. *Id.* 202. — Certainty of the Fact.

That Proceedings upon Indictments are not to be ſtay'd upon any Account, it being at the Suit of the King. 4 *Mod. Rep.* 8. 145. — Indictments not to be ſtayed.

Upon an Indictment for Murder, omitting that the Perſon ſlain was *in pace Dei*, and yet held good. *Id.* 164. — For Murder. Omiſſion.

An Indictment for a Riot, omitting *contra formam Statuti*, yet good. — Riot.

In an Indictment for Burglary, the very Day need not be ſet down; for if it be either before nor after the Offence, the Jury ought to find according to the Indictment. 3 *Mod. Rep.* 141. — Burglary. Day not Material.

An Indictment before a Juſtice of Peace, *infra Burgum*, and ſays not *pro Burgo*, is ill. *Sel. Rep.* 304. — *Infra Burgum*, ill.

Indictment *de Forgery*, without ſaying *Vi & Armis*, is good. 2 *Lev. Rep.* 221. *Id.* 111. — Forgery.

An Indictment that *Scienter recepit Latrones*, without ſaying that he knew them to be Thieves, good. *Id.* 208. — *Scienter recepit Latrones.*

Vide 3 *Lev. Rep.* 396. Where 'tis ſaid, that an Indictment for High-Treaſon wanting theſe Words, *contra Ligeantiæ ſuæ debitum*, is ill, and not ſupplied by other Words tantamount. *Vide* 4 *Mod. Rep.* 166. — For High-Treaſon. Omiſſion.

An Indictment is no more than an Accuſation, and in the Nature of the King's Court, and may be true or falſe. 9 *Co.* 118. *a.* — No more than an Accuſation, *&c.*

Vide Inquiſition.

Some Observations of Indictments, &c. from the Abridgment of the Statutes.

Inquests by Sheriffs, &c.

I. *West.* 2. *cap.* 13. 13 *E.* 1. Sheriffs, Bailiffs of Franchises, and others that take Inquest of Malefactors, shall do it by at least 12 lawful Men, who shall put their Seals to such Inquisitions, and the said Officers shall imprison such Malefactors.

False Imprisonment.

II. If they imprison any without such Inquests, the Party grieved shall maintain an Action of false Imprisonment against them.

Indictments by Sheriffs, &c.

III. *Stat.* 1 *E.* 3. *Stat.* 2. *cap.* 17. Sheriffs, Bailiffs of Franchises, and others, who take Indictments, shall do it by Roll indented, whereof one Part shall remain with the Indicters, and the other with him that takes them; so as one of the Inquest may have one Part thereof to shew to the Justices when they come to make Deliverance.

Before Justices of Oyer and Terminer.

IV. *Stat.* 25 *E.* 3. *Stat.* 5. 14. After one is indicted for Felony before the Justices of *Oyer* and *Terminer*, the Sheriff shall be commanded to attach his Body by a *Capias*, and if the Sheriff return a *Non est inventus*, another *Capias* shall issue out (returnable in three Weeks) whereby the Sheriff shall have Power to seize his Chattels, and to keep them until the said Return, and then also, if the Sheriff return a *Non est inventus*, an Exigent shall be awarded, and the Chattels shall be forfeited; but if he yield himself, or be taken by the Sheriff or other Officer, before the Return of the second *Capias*, his Goods and Chattels shall be saved.

Process.

V. *St.*

Stat. 11 *H.* 4. 9. No Indictments ſhall made but by Inqueſt of lawful Men re- ed by Sheriffs, Bailiffs of Franchiſes, or r Officers who ought to do it, without ing them nominated by other Perſons to aid Officers; and all Indictments other- ſhall be void. Indictments by lawful Inqueſt.

II. *Stat.* 3 *H.* 7. 1. *pars inde.* Juſtices of ce may take (by Diſcretion) an Inqueſt, reof every Man mall have Lands of the ly Value of 40 *s.* to enquire the Con- ments of a former Inqueſt taken before n, or others, of Matters inquirable or entable before them, and whereof Com- nt ſhall be made by Bill. To enquire of Concealments.

VII. *Stat.* 37 *H.* 8. 8. *pars inde.* Theſe rds, *vi & armis*, viz. *cum baculis, cultel- arcubus, & ſagittis*, or the like, ſhall not Neceſſity be put into any Inquiſition of ictment, but they ſhall be adjudged good, withſtanding thoſe Words are therein tted. Words not neceſſary to be inſerted.

See for *Directions to Precedents* at the er end of this Treatiſe. Precedents.

Note, By the *Stat.* 7 *W.* 3. *c.* 3. *No Indict- s in Caſes of Treaſon and Miſpriſion of Trea- or any Proceſs or Return thereupon, ſhall quaſh'd, on the Motion of the Priſoner, for writing, falſe or improper Latin, unleſs Ex- ion for the ſame be made by the Priſoner, or Council, before Evidence given in Court. any Judgment given upon ſuch Indictment be revers'd upon a Writ of Error.* The urt underſtood this to be before Plea aded, or at leaſt before the Jury ſworn. *kw. Try. p.* 20. *uſque* 36. But the Advan- e of the Priſoner's Council ſlipping that Time, No quaſhing an Indictment in Treaſon for falſe Latin, *&c.* unleſs, *&c.* It may be revers'd for Error.

Time, was waved, and the Council admi
to except, as to Miſwriting, Miſpelli
falſe and improper Latin, before the
dence opened; but they did not, for t

Exceptions in Arreſt of Judgment.

Exceptions were ſaid to be ſubſtan
which might be moved in Arreſt of Ju
ment after Verdict. *ub. ſup.*

Vid. County, Place.

Infant.

Examination.

EXamination of an Infant of 13,
of 9 Years of Age, allowed in ſo
Caſes. *Hales P. C.* 263.

Infant excuſed for Felony.

Infant within Age of Diſcretion
a Man, no Felony; as if he be 9 or 10 Y
old: But if by Circumſtances it appear
could diſtinguiſh between good and bad
is Felony; as if he hide the Dead, make
cuſe, *&c.* But in ſuch Caſes, Execution
Prudence reſpited to obtain a Pardon. *H*
C. 43, 44.

Infor

Information and Informer.

AN Information is to be againſt the Townſhip, upon a Felons Eſcape. *Kel.* ep. 5. *Vide* London. — **Againſt a Townſhip.**

Where a Stat. gives a Penalty to the Proſecutor, ſo as he ſues within a Time preſcribed, a *Latitat* ſued forth is not a Commencement of ſuch Suit. 4 *Mod. Rep.* 130. — **Proceſs.**

Vide 1 *Lev. Rep.* 257. An Information for ſeducing and marrying a young Heireſs without Aſſent of her Parents. — **For ſeducing an Heireſs.**

If an Information for a Riot may be in the Attorney-General's Name without Preſentment or Indictment. *Show. Rep.* 49, 108. — **If for a Riot, &c. without, &c.**

If one appear at Term on Recognizance taken the Vacation before, and an Information for a Riot is filed againſt him, he need not plead immediately, but may imparl to the next Term. *Id.* 56. — **Imparlance thereupon.**

Information for exacting divers Sums of Money for Paſſage in a Ferry, *Secundum ratam ſex Denar. pro quolibet homine, &c.* is uncertain. *Id.* 389. — **Extortion. Incertainty.**

A Common Informer muſt proſecute within a Year, upon a penal Statute. 4 *Mod.* ep. 130. — **Common Informer.**

Who may be ſaid to be ſuch an Informer as muſt bring an Action within the Year, by Force of 31 *Eliz.* for a falſe Return. *Id.* 354. — **Who may be ſuch.**

And if the King were to have nothing, *Quære.* If he be within the Statute? *Ibid.*

Whether

Attorney within Statute for Extortion, *Na.*

Whether Attorneys are within the Statute 3 *Jac.* 7. against Extortion or not, and it ſeems they are; and that whenever a Statute makes a Criminal, an Information will lie upon the Statute, tho' not given by expreſs Words. 1 *Mod. Rep.* 5, 6.

Not againſt Lord for Diſtreſs.

That an Information does not lie againſt a Lord, for taking unreaſonable Diſtreſſes of ſeveral of his Tenants. *Id.* 71. 288.

Forgery againſt a Coroner.

Information for a Forgery brought againſt a Coroner, who inſerted the Names of two Perſons in an Indictment upon his Inqueſt for a Murder, whom the Jury had not found guilty. 3 *Mod. Rep.* 66.

Quoddam ſcriptum per quod.

For Forging *quoddam Scriptum, per quod A.* was bound, which cannot be if the Bond forged. *Id.* 104.

For a Riot.

For a Riot in breaking a Bank, *&c.* Jury fined *quoad fractionem Ripæ* guilty, and *quoad Riotam* not guilty, Judgment arreſted. *Id.* 73

Going armed.

For going armed to terrifie the People 'tis an Offence at Common Law. *Id.* 118.

Perjury.

Perjury in a Court Baron indictable. 1 *Mod. Rep.* 55.

Swearing to Value of Lands.

An Information for Perjury will not lie againſt a Perſon for ſwearing to the Value of Lands, if not true. 3 *Mod. Rep.* 134.

Perjury in Depoſitions before Commiſſioners.

For Perjury in a Depoſition taken before Commiſſioners in *Chancery*, whether they ought to be preſent to teſtifie that the Defendant is the ſame Perſon, and it ſeems they or the Clerk to the Commiſſion, preſent, would have been good Evidence. *Id.* 116, 117.

Upon Affidavit of a Robbery.

That if an Affidavit be made before a Juſtice of the Peace of a Robbery, as enjoined by the Statute; if you will convict

he Perſon of Perjury, you muſt prove the wearing of the Affidavit. *Id.* 117.

Againſt a Ferry-man for Extortion, void for Incertainty. 4 *Mod. Rep.* 101, 103. Where void for Incertainty. *Id.* 321. *Vide ante.*

Vide 1 *Saunders* 275. where is ſhewn, That an Information for a Debt upon a Bond made to a *Felo de ſe*, was ill for two Cauſes. Alſo how the Form of an Information founded upon an Inquiſition ought to be. *Ibid.* Upon a Bond made to a *Felo de ſe.*

Where the Court of *B. R.* will not hear any Exceptions to an Information for an Offence in the Nature of Embracery, *Id.* 301, 302. Embracery.

See for Precedents at the latter End.

Concerning Informers.

By the Statute of 18 *Eliz.* 5. It is enacted, That an Informer ſhall exhibit his Suit in proper Perſon, and purſue it by himſelf, or by his Attorney in Court, and that by way of Information or original Action, and ſhall have no Deputy, and all this in pain of 10 *l.* and the Pillory. How he ſhall exhibit, *&c.*, Pillory.

Alſo, That a Note of the Time of exhibiting the Information ſhall be truly taken, and from thenceforth it ſhall be taken to be of Record, before which Time no Proceſs ſhall iſſue out upon it. Note of the Time.

That the Clerk that makes out the Proceſs ſhall indorſe the Informer's Name, and alſo the Statute upon which the Information is granted, in pain of 40 *s.* Informers Name indorſed.

That

Trial. That no Jury ſhall appear at *Weſtminſter* for a Trial upon any Penal Law, when the Offence was committed above 30 Miles from *Weſtminſter*, except the Attorney General for ſome reaſonable Cauſe require the ſame.

Compoſition. That no Informer ſhall compound with any Defendant before Anſwer, nor then, but by Conſent of Court, in pain of 10*l.* and the Pillory.

Pillory.

That where the Informer Delays, or diſcontinues his Suit, or otherwiſe is nonſuit or overthrown, the Court ſhall aſſign Coſts to the Defendant, to be immediately levied by Execution iſſuing out of the ſame Court.

Coſts to the Defendant.

Juſtices of Oyer and Terminer, Aſſize and Peace, in their Seſſions have Power to hear and determine theſe Offences.

But this Act ſhall not reſtrain Actions brought for Maintenance, Champerty, buying of Title, or Imbracery, nor any certain Perſon or Body Politick, to whom any Forfeiture or Penalty is ſpecially limited, nor certain Officers who have lawfully uſed to exhibit Information.

By the Statute of 29 *Eliz.* 5. If any ſhall be ſued upon any Penal Law in the *King's-Bench*, *Common-Pleas* or the *Exchequer*, where ſuch Perſon is bailable by Law, or may appear by Attorney, the Perſon ſo ſued ſhall, at the Day contained in the firſt Proceſs, appear by Attorney to defend the ſame, and ſhall not be urged to perſonal Appearance, or to put in Bail to anſwer the ſame.

Bail.

But by Stat. 31 *Eliz.* 10. The ſaid Clauſe of 29 *Eliz.* 5. ſhall only extend to natural-born

Subjects, or free Denizens, and none rs. Subjects or Denizes.

ſo by Stat. 31 *Eliz.* 5. It is enacted, That rmers, heretofore reſtrained by Order of Court, ſhall not purſue Actions popu- (that is, an Action which is given e King, and ſuch other Perſon as will and not to the Party grieved.)

at in popular Actions, the Offence ſhall d to be done in the County where in- it was done; otherwiſe, if the Defen- traverſe and diſprove that Point, the tiff ſhall be barred. Action popular. Particular County.

t this Act doth not reſtrain Officers, h have lawfully uſed to exhibit In- ations, nor Actions brought for Cham- buying of Titles, Extortion, Offences ſt the Statute of 1 *Eliz.* 11. (concern- the right landing of Merchandize, Cuſtom of Sweet-wines) concealing ſtoms, *&c.* corrupt Uſury, Foreſtalling, ating or Ingroſſing, when the Penalty amount to 20 *l.* or above: For in all Caſes the Offence may be laid in any ty. Any County.

o popular Actions where the King on- h the Forfeiture, ſhall be commenced n two Years, where he hath only a and the Informer the reſt, within one But this is to be underſtood where ter Time is not limited by any Sta- . Time of Proſecution.

o, all Suits for uſing unlawful Games, y Art or Myſtery, without being ht up in it, and for not having Bows Arrows according to the Statutes, e proſecuted at the Aſſizes or Seſſions

of

County Leet. of the County, or at the Leet, with which the Offence was committed, and elſewhere.

By Stat. 21 *Jac.* 4. Actions popular wh may be preſented before Juſtices of Aſſi *Niſi prius*, Gaol Delivery, Over and T miner or Peace, ſhall be proſecuted ly in the Counties where the Offen were committed, except for Recuſan Maintenance, Champerty, buying of Ti concealing of Cuſtoms, *&c.* or tranſp ing of Gold, Silver, Wool, Woolfels, Leather:

That upon Default of proving, that Offence was committed in the ſame Cou the Defendant ſhall be found Not Guilt

Oath. That the Informer ſhall make Oath, t the Offence was committed in the ſa County where the Action was laid, within one Year before the Suit c menced.

Iſſue general. That the Defendant in a popular Ac may plead the General Iſſue, and give Special Matter in Evidence.

Alſo, by a Stat. 4 *H* 7. *cap.* 28. It is acted. That Recovery in an Action pop

Covin. by Covin, ſhall be no Bar in an Action

Bona fide. for the ſame Thing *Bona fide.* And the Defendant attainted of Colluſion, ſuffer two Years Impriſonment, to be ſecuted within one Year.

Releaſe. And that no Releaſe of a Common ſon, ſhall in this Caſe diſcharge an A popular.

Yet no Colluſion is in this Caſe averr where the Point of the ſame Action, o Colluſion it ſelf, hath been tried by Ver

By Stat. 13 & 14 *Car.* 2. *cap.* 11. Concerning Customs, it is enacted, That no Informer or Seizer shall compound under the Third of the appraised Value, upon pain of his Office. Composition.

By 4 & 5 *W.* & *M. cap.* 18. The Clerk of the Crown of the King's-Bench, shall not, without Express Order in open Court, receive or file any Information for Trespasses, Batteries and other Misdemeanors, or issue any Process thereupon, before he shall have taken, or shall have delivered to him a Recognizance from the Informer, with the Place of his Abode, Title, or Profession, to be entred to the Person prosecuted in 20 *l.* Penalty, to prosecute with Effect, and abide by such Order as the Court shall direct; which Recognizance the Clerk of the Crown, or a Justice of Peace in the Place where the Cause of any such Information shall arise, may take, and the Clerk of the Crown shall enter the same upon Record, and file a *Memorandum* thereof in some publick Place in his Office, that all Persons may resort thereunto without Fee. Informer to give a Recognizance before Process issue out. To prosecute with Effect. A *Memorandum* to be filed.

And if any Person, against whom such Information shall be exhibited, appear and plead to Issue, and that the Prosecutor shall not at his own Charge, within a Year after Issue joined, proceed to Trial; or if upon such Trial, a Verdict pass for the Defendant, or the Informer procure a *Noli prosequi* to be entred, the Court shall award the Defendant Costs; unless the Judge, before whom it shall be tried, shall at the Trial in Open Court certifie upon Record, that there was a reasonable Cause for such Information: And in case the Costs be not paid Costs to the Defendant for Defect in Prosecution. Unless, &c.

within three Months after they are tak the Defendant ſhall have the Benefit of t ſaid Recognizance, to compel the Payme thereof.

Not to extend, *&c.*

This Act ſhall not extend to Informatio in the Name of His Majeſty's Coroner Attorney, commonly called, The Maſter the Crown Office.

All Pleas to ſtand upon King's Demiſe, *&c.*

Alſo upon the Demiſe of any King Queen of this Realm, all Pleas to Inform tions ſhall ſtand, without calling the D fendants to plead anew, unleſs the Defe dants Requeſt the Court for that Purp within five Months after ſuch Demiſe.

Inquiſition.

Vide Indictment, Treaſon, *&c.*

Upon a Perſon's drowning himſelf.

AN Inquiſition taken before the Coron the Perſon having drown'd him it was *ſuffocat & emergit' fuit*; if it had ſt ſingly upon the Word *emergit'*, it had b inſenſible, but the Word *ſuffocat'* expreſ the Senſe, it was held good. 3 *Mod. Rep.*

Defective Inquiſition quaſhed.

Upon an Inquiſition of an Office, 't ſaid, That an Indictment is but another of Office; and here being no Eſtate fou 'twas much like an Indictment that finds Offence, and therefore to be quaſh'd. 3. *Rep.* 336. And this cannot be help'd a *melius Inquirendum*, which never will port ſuch a defective Inquiſition. *Ibid.*

Wh

ere the Forfeiture is found, the King mediately in Possession. 4 *Mod. Rep.* 7. — Forfeiture found.

a forcible Entry upon a Tenant for it must be *expulit* and not *disseisivit.* 9. — Forcible Entry.

at no Forfeiture of a *Felo de se* ac- before an Inquisition taken. 1 *Saund.* — *Felo de se.*

en an Inquisition, which finds the Fe- *le se*, is return'd into the *King's-Bench*, ebts and Dammages which were due *Felo de se*, are vested in the King. 2. — Debts of *Felo de se* vested in the King.

for *Precedents* at the latter End of reatise.

Interruption.

E Prisoner and his Council have been heard in the midst of summing Evidence by the Court, to rectifie ke. *Rookwood's* Trial, 71. — Upon summing up Evidence.

Observations ought to be made upon soner's Evidence, till he hath con- to give all his Evidence; admitted od Practice in the Lord *Mohun's* Trial, *Vide* Trial. — Upon Prisoners Evidence.

Intruſion.

Entry by Heir before Homage.

I. PRerog. Reg. cap. 13. 17 E. 2. the King's Tenant in Chief di his Heir enters into the Land befo hath done Homage to, or received of the King, he ſhall thereby gain no hold; and if he dieth ſeized durin Time, his Wife ſhall not be endowed of; as it fell out in the Caſe of the of *Manſel* the Marſhal.

Information of Intruſion.

II. Stat. 21 *Jac.* 14. When the or any claiming under his Title, out of Poſſeſſion, or not have recei Profits of Lands, *&c.* within the S twenty Years before any Informatio truſion brought to recover the ſa this Caſe the Defendant ſhall plead neral Iſſue, if he think fit, and ſhall preſs'd to plead eſpecially, and ſhall

King's Title found.

tain the Poſſeſſion thereof, until th be found for the King.

III. Where an Information of I may fitly be brought on the King's no *Scire facias* ſhall iſſue, wh the Subject ſhall be forced to a Pleading, aud be deprived of the G tended by this Act.

Ju

Judgments in ſeveral Caſes.

High-Treaſon, in all Caſes except counterfeiting Coin, to be drawn, d, Intrails taken out and burnt, Head ff, Body quartered, Head and Quar- ang'd up. *C. P. C.* 268. — High-Treaſon.

gment for counterfeiting Coin, drawn ang'd; the like for Clipping. *Ibid.* — Counterfeiting Coin.

ev. 96. But the Judgment of a Wo- thoſe Caſes, to be hang'd and burnt. *l. C.* 268.

an Indictment for High-Treaſon, ent is given againſt him without *Allo-* before Judgment. *Show. Rep.* 132. — High-Treaſon.

e. 4 *Mod. Rep.* 395. Indictment for on, and the Words *ipſo vivente combu-* left out of the Judgment, for which n it was reverſed. 395, 401. — Judgment reverſed.

Petit-Treaſon; for a Man, drawn and d; for a Woman, drawn and burnt. *Pl. C.* 268. — Petit-Treaſon.

Felony, to be hang'd till dead; and this cannot be by the King altered heading. *Ibid.* — Felony.

Petit-Larceny, to be whip'd, and he s. Goods. *Id.* 269. — Larceny.

on Chancemedley, or *per Infortunium*, preſs Judgment, yet forfeits Goods. — Chance-Medley.

on Miſpriſion of Treaſon, forfeits s and Profits of Lands during Life, erpetual Impriſonment. *Ibid.* — Miſpriſion of Treaſon.

On a *Goldſmith.* Judgment on a *Goldſmith* for falſifying Plate. *Kel. Rep.* 39. *Vide ante* Goldſmith.

Several Judgments. Several Judgments on one and the ſame Verdict. *Id.* 77.

Manſlaughter and Appeal. Judgment on a Conviction of Manſlaughter return'd, tho' an Appeal of Murder was return'd with it. *Id.* 90.

Relation. The Judgment is to have Relation to the Conviction only. *Id.* 91.

Barretry. When Judgment upon Indictment for Barretry is reverſed upon Error, no Writ

Reſtitution. of Reſtitution to a Stranger to the Record. *Show. Rep.* 261.

Puniſhment purſued. Where a particular Puniſhment is directed by a Statute-Law, it muſt be purſued, and no other can be inflicted upon the Offender. 3 *Mod. Rep.* 78, 118.

Factious Books. For printing treaſonable and factious Books. *Kel. Rep.* 24.

Mitigation. Judgment for Treſpaſs, tho' the Indictment was for Felony. *Id.* 29.

Mute. Where one ſtanding mute, Judgment to be preſs'd. *Id.* 36.

Simile in Appeals. In Appeals, a Mute has the ſame Judgment as on Indictments. *Id.* 37.

For procuring a Treſpaſs. Upon an Information againſt *A.* for procuring *B.* and *C.* to do a Treſpaſs, he may be convicted of the Procurement, although the others are not convicted of the Fact. 1 *Lev.* 124.

Juriſdiction. Vide Courts.

Jury and Jurors.

Vide Amercements, Challenge, Trial, Treason, *&c.*

WHERE the Jury may be fined for giving their Verdict contrary to e Courts Direction. *Kel. Rep.* 50. — Where they may be fined.

And where amerced for undervaluing of oods forfeited. *Id.* 58. — Amerced.

The Circumstances enquirable (where one ls another in keeping of the Peace, or ere a Parent or Master kills a Child or rvant in chastising) are, Whether the anslaughter be not committed wilfully and purpose, under Pretext of keeping the ce? Also the Intent and Purpose of the astisement, by the Master or Parent. *Id.* — What Circumstances enquirable upon Death through Chastisement.

Londoners to serve upon a Jury out of *Lon-*, where the King is a Party. 1 *Lev. Rep.* — *Londoners.*

More than 24 Jurors may be return'd in iminal Cases. *Kel. Rep.* 16. — More than Twenty four return'd.

That the Jurors have found others in the e Indictment guilty, no Cause of Chalge. *Kel. Rep.* 9. — Challenge.

One peremptorily challenged, may be wn against others in the same Indictnt. *Ib.* — *Simile.*

Where the Jury ought to find the Price of Deodand before the Coroner. *H. Pl. C.* 33. — Deodand.

Special Jury not ſtricken in Capital Caſes.

In Capital Caſes, a ſpecial Jury ſhall not b ſtricken by the Clerk of the Crown in *B.* as is uſual by the Secondary in Civil Cauſ on Tryals at Bar. Thus it was ruled in t ſeveral Caſes of *Fitz Harris*, *O Carny*, an *Farrington*. 2 *Jones Rep.* 222.

Freeholders in *London*.

There is no Pannel made in *London* b Freeholders, there being few Freeholde there capable of being impannel'd, becau the Eſtates of the City belong much to t Nobility and Gentry who live abroad, a to Corporations; therefore in the City *London* the Challenge of Freeholders is cepted. *Lord Ruſſel's Try.* 32. And the S 2 *H.* 5 *c.* 3. extends not to this Caſe, and ruled in the *Lord Ruſſels Caſe* at the *Old Ba* and it was there ſaid, That at the Commo Law Trials for Treaſons might be witho Freeholders of the Jury; and for Treaſo Trials ſhall be according to Common-La by *Stat.* 1 & 2 *P. & M. c.* 10. *Lord Ruſſ Try.* 36. But now, by the *Stat.* 1 *W.* & *Seſſ.* 2. *c.* 2. it is declared and enacted (*in alia*) *That Jurors ought to be duly impanne and returned, and Jurors which paſs upon in Trials for High-Treaſon ought to be F holders.*

Jurors ought to be Freeholders in Trials of High-Treaſon.

No *Medietas Linguæ* in Treaſon.

No *Medietas Linguæ* is allowed in Treaſ nor in any Appeal of one Alien againſt a ther, nor ſhall a *Scot* be accounted an A to have a *Medietas Linguæ*, nor *Egyptians*. *dietas Linguæ* muſt be prayed by the Priſo and the Jurors ne d not be of the ſame tion, but any Aliens. *Hale's P. C.* 260, 2 *Vid. Dyer.* 144, 145. See after.

Ol

Observations from the Statute-Law, concerning Jurors, &c.

I. *Stat.* 42 *E.* 3. 11. No Inqueſts, but Aſ- What Inqueſts by *Niſi prius.*
zes and Deliverances of Gaols, ſhall be ta-
en by Writs of *Niſi prius*, before the Names
all that are to paſs thereupon are return-
into the Court.

II. The Sheriff ſhall array the Pannels in What Time Pannels array'd.
lizes four Days at leaſt before the Seſſions
the Juſtices, in Pain of 20 *l.* ſo that the
rties may have a Copy of the Pannels, if
ey demand them; and the Returns there-
by the Bailiffs to the Sheriffs ſhall be
Days before the Seſſions, upon the like
in.

III. The moſt ſubſtantial People, worthy Moſt ſubſtantial People.
Credit, and not ſuſpect, ſhall be put upon
nnels, and ſuch as may have beſt Know-
ge of the Truth, and dwell neareſt.

IV. *Stat.* 3 *H.* 8. 12. Pannels returned by Pannels reform'd by the Juſtices.
e Sheriff to inquire for the King, may be
formed by the Juſtices of Gaol-Delivery,
Juſtices of Peace, (1 *Qu.*) before whom
ch Pannel ſhall be ſo returned: And the
eriff ſhall return the Pannels ſo reformed, in
in of 20 *l.* to be divided between the King
d the Proſecutor; and in this Caſe, the
ng's Pardon ſhall be no Bar againſt ſuch
oſecutor.

V. *Marlbr. cap.* 14. 52 *H.* 3. Such as have Such as have Charters of Exemption.
arters of Exemption not to be impannelled
on Juries, ſhall (notwithſtanding their
ivilege) be ſworn upon great Aſſizes, Pe-
mbulations, in Deeds and Writings of Co-
venants

venants (where they be named for Witneſſes) and in Attaints, and when their Oaths are ſo requiſite, that without them Juſtice cannot be adminiſtred.

Jurors upon Petit-Aſſizes.

VI. *Weſt.* 2. *cap.* 28. *E.* 1. No more Jurors ſhall be ſummoned in one Aſſize than 24: Alſo old Men above the Age of 70, or ſick or diſeaſed at the Time of the Summons, or not dwelling in the Country, ſhall not be put in Juries of Petit-Aſſizes; neither ſhall any be put in Aſſizes or Juries that have not Land worth 20 *s. per Ann.* and if the Aſſizes or Juries be taken out of the County, their Revenue ſhall be 40 *s. per Annum* at leaſt, except ſuch as be Witneſſes to Deeds, or other Writings, and be able to travel.

Upon great Aſſizes.

VII. This Statute ſhall not extend to great Aſſizes, where many times Knights are to be impannelled; for they (by reaſon of their Scarcity) may ſerve, albeit they dwell out of the Country, ſo they have Land in the County for which they ſerve.

Sheriff amerced.

VIII. No Sheriff, Under-Sheriff, or Bailiffs, ſhall offend againſt this Law, in Pain to anſwer Dammages to the Party, and to be amerced to the King.

IX. Juſtices of Aſſize have Power to hear and determine theſe Offences.

To ſerve out of the County, *&c.*

X. *Stat.* 21 *E.* 1. *Stat.* 1. None ſhall be impannelled to ſerve out of their proper County unleſs they have Lands worth 5 *l. per Annum* at leaſt; nor in the County, unleſs they have Lands worth 40 *s. per Annum.*

XI. This Statute ſhall not extend to Juries taken before Juſtices Errant, nor to Corporations; but that they may do, as in Time paſt.

XII. *Artic*

XII. *Artic. ſuper Cart. cap.* 9. 28 *E.* 1. None ſhall be impannelled, but as ordained by Statute, and they ſhall be next Neighbors, moſt ſufficient, and leaſt ſuſpicious; in Pain that the Officer who doth otherwiſe ſhall anſwer double Dammages to the Party griev'd, and be grievouſly amerced to the King. Next Neighbours.

XIII. *Stat.* 5 *E.* 3. 10. If a Juror take a Bribe of either Party, and be thereof attainted, he ſhall ſerve no more of any Jury, be impriſoned, and ranſomed at the King's Will; and the Juſtices, before whom he ſerves, ſhall have Power to hear and determine this Offence according to this Statute. Juror taking a Bribe.

XIV. *Stat.* 25 *E.* 3. *Stat.* 5. *cap.* 3. No Indicter ſhall be put upon the Inqueſt for the Deliverance of the Indictee of Felony or Treſpaſs, if he be challenged by the Indictee for that Cauſe. Challenge.

XV. *Stat.* 34 *E.* 3. 4. Sheriffs and others ſhall array their Pannels of the next People not ſuſpected nor procured, in pain to be puniſhed by the Juſtices that take ſuch Inqueſt, both to the King and the Party grieved, according to the Quantity of the Treſpaſs and Dammage. Next People not ſuſpected, *&c.*

XVI. *Stat.* 34 *E.* 3. 8. If any of the Jurors be accuſed by either of the Parties, for taking a Bribe to give his Verdict, the Juſtices may preſently try it by a Jury then alſo to be taken. Accus'd of Bribes. Another Jury preſently.

XVII. If it be proſecuted by any other than one of the Parties, he ſhall have the Fine; but if by one of the Parties, he ſhall recover Dammages by the Aſſeſſment of the Inqueſt ſo taken. The Suit may alſo be proſecuted before other Juſtices in Form aforeſaid. Fine to be recovered.

XVIII.

40 Marks, or 40 *s.*

XVIII. *Stat.* 2 *H.* 6. *Stat.* 1. *cap.* 3. None ſhall be admitted to paſs in an Inqueſt upon Trial of the Death of a Man, or betwixt Party and Party in a Plea Real or Perſonal, whereof the Debt or Dammage declared amounts to 40 Marks, unleſs he have Lands or Tenements of the Yearly Value of 40 *s.* beſides Repriſes, Challenge thereof being made by the Party.

Juror impannelled within *Middleſex.*

XIX. *Stat.* 8 *E.* 4. 3. Every Juror impannelled and returned within *Middleſex* in any of the Courts at *Weſtminſter*, at every Fourth Day of the Return thereof ſhall be called, who then appearing, his Appearance ſhall be recorded, and he ſhall not be amerced, nor loſe Iſſue that Day in that Suit.

Eſſoins allowed.

XX. No Default, Eſſoin, or other Delay of either Party, (Plaintiff or Defendant) in any Perſonal Action (by the Law heretofore uſed) ſhall by this Ordinance be prejudiced or taken away in any Manner; but ſhall be adjudged, and allowed in as ample Manner, as they were before the making of this Act.

Upon Inqueſts at the Sheriff's Turn.

XXI. *Stat.* 1 *R.* 3. 4. No Bailiff or other Officer ſhall return or impannel any Perſon upon any Inquiry at the Sheriff's Turn, but ſuch as are of good Name and Fame, having Lands and Tenements in the ſame County, *viz.* Freehold of 20 *s.* and Copyhold of 26 *s.* 8 *d. per Annum*, in pain that the Bailiff or other Officer ſhall forfeit for every Perſon ſo returned or impannelled not of the Sufficiency aforeſaid, 40 *s.* for every Time, and the Sheriff 40 *s.* more, which ſaid Forfeitures may be recovered by Action of Debt, and ſhall be divided betwixt the King and the Proſecutor.

Forfeitures.

XXII.

XXII. *Stat.* 4 *H.* 8. 3. For Iſſues loſt by Jurors in *London*, given to the Mayor and Sheriffs there by the Statute of 11 *H.* 7. 21. (which ſee *Attaint*) the ſaid Mayor and Sheriffs, and their Succeſſors may diſtrain reſpectively, *viz.* the Mayor for his, and the Sheriffs for theirs. Diſtreſs for Iſſues in *London.*

XXIII. The Sheriffs of *London* have Power to return Pannels of Jurors in Suits depending in any of the Courts at *Weſtminſter*, and triable in *London*, being Citizens, and having Goods to the value of 100 Marks, who ſhall ſerve and be ſworn in like Manner, as if they had Lands and Tenements of 20 *s. per Annum.* Upon Suits at *Weſtminſter* triable in *London.*

XXIV. The Sheriffs of *London* ſhall return upon the firſt Diſtreſs upon every Juror 20 *d.* and upon the Second Diſtreſs 40 *d.* and upon every other Diſtreſs after that the Double, until a full Jury appear and be ſworn, in pain of 10 *l.* to be divided betwixt the King and the Proſecutor. Iſſues to be returned by Sheriff of *London.*

XXV. *Stat.* 5 *H.* 8. 5. The Statute of 4 *H.* 8. 3. (as to the Iſſues to be ſet upon Jurors) ſhall be underſtood only of Writs of Diſtreſs before Juſtices, or Juſtice of *Niſi prius*, in Suits depending in the Courts at *Weſtminſter*, and triable at St. *Martins-le Grand* in the City of *London*, and not of other Writs or Proceſſes iſſuing out of the ſaid Courts. Expoſition of the laſt Statute.

XXVI. *Stat.* 23 *H.* 8. 13. Trials of Felons in Corporate Towns, may be by Freemen of the ſame Corporation worth 40 *l.* in Goods, albeit they have no Freehold. Of Felons in Corporate Towns.

XXVII. This Act ſhall not extend to any Knight or Eſquire, dwelling or reſorting in or to any ſuch Town. Exception.

XXVIII.

XXVIII. *Stat.* 35 *H.* 8. 6. Where ſuch Perſons as ſhould paſs upon the Trial of any Iſſue in any of the Courts at *Weſtminſter*, ought to have Freehold worth 40 *s. per Annum*, the Writs ſhall be in this Form: *Rex, &c. præcipimus, &c. quod Venire facias coram, &c.* 12 *liberos & legales homines, &c. Quorum quilibet habeat*, 40 *ſolid. terr. tenem. vel redd. per Annum ad minus, per quos rei veritas, &c.* But when that is not requiſite, the Clauſe, *Quorum quilibet habeat* 40 *ſolid. terr. vel redd. per Annum, ad minus* ſhall be omitted, See after.

The Form of the *Venire* for 40 *s.*

Ad minus.

XXIX. Upon every *Venire facias* that hath the ſaid Clauſe, *Quorum quilibet, &c.* The Sheriff or other Officer ſhall not return any having leſs then 40 *s. per Annum* Freehold out of any Demeſne, and in the ſame County where the Iſſue is to be tried, in pain to forfeit for every one otherwiſe returned 20 *s.* They ſhall alſo return ſix Hunderors at leaſt, if there be ſo many in the Hundred where the *Venue* lieth, in pain to forfeit for every Hundredor not ſo returned, 20 *s.* And in every ſuch Writ, wherein that Clauſe is omitted, they ſhall not return any, unleſs he may diſpend ſome Lands or Tenements out of Ancient Demeſne, and in the ſaid Hundred, and alſo ſix Hundredors there upon the like Pains.

Upon *Quorum quilibet.*

Freeholders.

Six Hundredors.

Freeholders and Hundredors.

XXX. Upon every writ of *Habeas Corpora*, or *Diſtringas*, with a *Niſi prius*, The ſaid Sheriff or other Officer ſhall return Iſſue upon every Man as followeth, *viz.* Upon the firſt Writ 5 *s.* upon the ſecond 10 *s.* upon the third 13 *s.* 4 *d.* and upon every other Writ afterwards 26 *s.* 8 *d.* in pain of 5 *l.*

Iſſues upon *Habeas Corpora*, &c.

XXXI.

XXXI. In every ſuch Writ of *Habeas Cor-*
a, or *Diſtringas*, if a full Jury appear not, Addition *de Circumſtantibus*, &c.
being full, fall ſhort by Challenge, the
ſtices (upon Requeſt of either Party) may
mmand the Sheriff or other Officer to
me ſo many others then preſent as may
ke the Jury full, who ſhall be added to
former Pannel, and their Names annex-
thereunto.

XXXII. The Parties may have their Chal- Challange to the *Tales*.
ge to theſe *Tales de Circumtanſtibus*, and
Juſtice may proceed to try the Iſſue by
m, together with the others returned, as
ll as if ſuch *Tales* had been returned upon
h *Habeas Corpora*, or *Diſtringas*; and in ſuch
ſe the Trial ſhall be as effectual, as if it
been tried by Twelve of the Jurors re-
rned.

XXXIII. If any of the *Tales* being preſent Fine upon the *Tales*.
not appear, or after Appearance with-
w himſelf, the Juſtices may ſet a Fine
on him, to be levied, as Iſſues of Jurors
by the Common Law to be levied.

XXXIV. Albeit the Jury be made fully by Iſſues.
Tales, yet the Jurors that made Default
ll loſe Iſſues, as if the Jury had remained
want of Jurors.

XXXV. Upon a reaſonable Excuſe (for De- Iſſues diſcharged, *&c.*
lt of a Juror) proved by Two Witneſſes
fore the Juſtices, they may diſcharge the
es loſt; and in that Caſe, the Sheriff or o-
r Officer ſhall not incur the Penalty for
returning Iſſues: Alſo upon the not
ming of the Juſtices, the Jurors ſhall be
charged of their Iſſues, and the Sheriff
ther Officer of their Penalties.

XXXVI.

Not lawfully ſummoned.

XXXVI. If upon any *Habeas Corpora* or D*ſtringas*, any Juror be not lawfully ſummon or diſtrained, the Sheriff or other Offi ſhall loſe double the Iſſues returned up ſuch Juror.

Forfeitures divided.

XXXVII. The ſaid Forfeitures (not Iſſu ſhall be divided betwixt the King and t Proſecutor.

XXXVIII. The Right of others to Iſſue forfeited is ſaved.

Corporation.

XXXIX. The Act ſhall not extend to a Sheriff or Miniſter of a Corporation, ſo t they return like Iſſues as before are lim ted.

Tales upon a penal Statute.

XL. *Stat.* 4. & 5 *P. M.* 7. A *Tales de C cumſtantibus* may upon Requeſt for the K or Queen by any authorized thereunto, aſſigned by the Court, or upon Requeſt the Proſecutor or his Attorney, and by command of the Juſtices of Aſſize, or *Prius*, be granted in a Suit commenced up a penal Statute.

35 *H.* 8. 6. interpreted.

XLI. The *Stat.* of 35 *H* 8. 6. ſhall interpreted to give like Advantages to King and Queen, and Proſecutor, as it d there to the Plaintiff, as if ſuch Suits for King had been there particularly menti ed.

Tales in *Wales*, and Counties *Palatine.*

XLII. *Stat.* 5 *El.* 25. *Tales de Circ ſtantibus* ſhall be grantable in the Tw Counties of *Wales*, and the Counties Pala of *Cheſter*, *Lancaſter*, and *Durham*, bein the ſame Effect with the Statute of 35 *H.* 8 *See the Statute at large.*

At the Prayer of the Defendant.

XLIII. *Stat.* 14 *El.* 9. In caſe the Pl tiff or Defendant forbear or refuſe to pr *Tales*, it ſhall be granted (by the Juſtice

ſi prius in *England*, or thoſe of *Oyer* or *lize* in *Wales*, *Cheſter*, *Lancaſter*, and *Dur-m*, at the Prayer of the Defendant or Te-nt; and that as well in Suits upon penal ws, as upon other Trials.

XLIV. *Stat.* 27. *El.* 6. The Ability of Jurors urned upon Trials, ordained by the Sta-es of 2 *H.* 5 *Stat.* 2. *cap.* 3. and 35 *H.* 8. 6. be 40 *s. per Annum*, is increaſed to 4 *l. per num*, upon the like pain of 20 *s.* to be feited by the Sheriff or other Officer, for ery Juror otherwiſe returned; and in that ſpect, the writs ſhall be *Quorum quilibet ha-quatuor libras*, &c. Ability of Jurors, increaſed from 40 *s.* to 4 *l.*

XLV. Here the Iſſues to be returned ſhall as followeth, *viz.* Upon the firſt Writ *s.* upon the ſecond 20 *s.* upon the third *s.* and the double of 30 *s.* afterwards, un-a full Jury be ſworn, or the Proceſs o-rwiſe ceaſe, in pain that the Sheriff or her Officer ſhall forfeit 5 *l.* for every Ju-returned with leſs Iſſues ſet upon him. Iſſues to be return'd.

XLVI. Upon Iſſues loſt by a Failure of law-Summons, the Sheriff or other Officer ll forfeit the double Iſſues. Failure of Summons.

XLVII. The Sheriff or other Officer that es a Bribe, and agrees to take it directly indirectly for the ſparing of a Juror, ll forfeit 5 *l.* to be divided betwixt the een and the Proſecutor. Bribe to ſpare a Juror.

XLVIII. Upon any Trial, two Hundredors ll be hereafter deemed ſufficient, not-thſtanding any Challenge hereafter to be de againſt the ſame. Two Hundredors.

XLIX. All lawful Challenges ſhall be ad-ted, notwithſtanding this Act; neither Lawful Challenges.

ſhall it extend to Juries in Corporations, o
Wales.

7 & 8 W. Acts for Eaſe of Jurors, *&c.*

Note, That by an Act of 7 & 8 *Gulielm Tertii Regis*, for the Eaſe of Jurors, and be ter regulating of Juries, *It is Enacted*,

Habeas Corpora, & Diſtringas.

'That if the Plaintiff ſhall not proceed t Trial of the Iſſue at the firſt Aſſizes, afte the Teſte of the Writ of *Habeas Corpora*, ' *Diſtringas*, with a *Niſi prius*; That then, a ' in all ſuch Caſes (other than where View ' by Jurors ſhall be directed) the Plaintiff ' Demandant, whenever he ſhall think fit ' try the ſaid Iſſue at any other Aſſizes, ſh ' ſue forth and proſecute a new Writ of *V* *Venire de novo.* ' *nire facias*, directed to the Sheriff in th ' Form:

Form thereof.

Quod de novo Venire facias coram, (& *duodecim liberos & legales homines de Vic de* (A) *quorum quilibet habeat decem librat' t ræ tentorum vel reddituum per annum ad mi per quos* (*&c.*) *Et qui nec* (*&c.*) after ' ancient Manner; That is to ſay, the W ' is to be in the ſame Form as the firſt, o ' adding the Words *De novo.*

'Which Writ being duly returned ' filed, a Writ of *Habeas Corpora*, or *Diſtr* ' *gas*, with a *Niſi prius*, ſhall iſſue thereup ' for the ancient Fees, as in the Caſe o *Habeas Corpora,* or *Diſtringas.* ' *Pluries Habeas Corpora*, or *Diſtringas*, wit ' *Niſi prius*; upon which the Plaintiff ' Demandant ſhall and may proceed to T ' al, as if no former Writ of *Venire fa* ' had been proſecuted or filed in that Ca ' and ſo *toties quoties*, as the Caſe ſhall requ

Proviſo ſemper, &c.

'And if any Defendant or Tenant ſhal ' minded to bring the Iſſue to Tryal ' Proviſo (when by Courſe he may) he

of the iſſuable Term next preceding ſuch intended Tryal to be had at the next Aſſizes, ſue out a new *Venire facias* to the Sheriff in Form aforeſaid by Proviſo, and proſecute the ſame by Writ of *Habeas Corpora*, or *Diſtringas*, with a *Niſi prius*, as tho' there had not been any former *Venire facias* ſued out, or returned in that Cauſe, and ſo *toties quoties*, as the Matter ſhall require.

Taleſmen of what Validity.

This Act alſo provides, That Jurors to ſerve upon the Tales ſhall be Freeholders or Copyholders of the County, and returned upon ſome other Pannel to ſerve at the ſaid Aſſizes, and attending in Court, and may be challenged by Plaintiff or Defendant, Demandant or Tenant, as if they had been impannelled upon the *Venire facias*, awarded to try the Iſſue.

Sheriff of the County of *York* concerning Jurors.

See the Stat. 3 *Ann. cap.* 18. concerning the Sheriff of the County of *York* keeping a Regiſter, and entring the Names of Perſons ſerving as Jurors at the Aſſizes or Quarter-Seſſions for the County or Ridings, under Forfeiture of 100*l.* between the Queen and Proſecutor.

Concerning Jurors for the County of *York*.

By the ſame Statute, the Juſtices of Peace of all Counties of *England* and *Wales*, ſhall early at the Quarter-Seſſions next after the 24 of *June*, iſſue out Warrants to the Chief Conſtables, for them to Iſſue Precepts to the Conſtables, and Tythingmen, *&c.* within their Hundreds, requiring them to meet the ſaid Chief Conſtables in Fourteen Days after Date, where the Conſtables, *&c.* ſhall make a Liſt ſigned by them, of the Names and Places of Abode of all Perſons within the reſpective

According to former Acts.

Places they ſerve, qualified to ſerve on Juries, according to the Act 4 *W. & M.* with their Titles and Additions between 21 Years of Age and 70. as by 7 *W. & M. cap.* 32. is directed

A Liſt to be given in.

The Liſt to be given in to the Juſtices, in open Court, the firſt Day at the Quarter-Seſſions in the Week after *Michalemas.*

Forfeitures of Officers failing.

Every Conſtable of the Hundred failing to iſſue his Precept, to forfeit 10 *l.* and every Conſtable and Tythingman, *&c.* failing to meet, and failing to make a Liſt, and give the ſame in open Court, to forfeit 5

Proſecution.

And every High-Conſtable, Conſtable and Tythingman offending, to be proſecuted at the Aſſizes, Seſſions of Oyer and Termine Gaol-delivery and Peace.

Acts to be read.

And for the better obſervance of this Act *& 4 & 5 W. & M. & 7. W. & M. ca.* 32. The Juſtices at the General Quarter-Seſſions held after 24 *June*, ſhall cauſe the ſaid ſeveral Acts to be read in open Court.

Remedy againſt Challenges to the Arrays and Polls for want of Hundredors.

And Note, By the late Act 4 & 5 *Ann. for Ammendment of the Law*, reciting, That whereas great Delays do frequently happen in Tryals, by reaſon of Challenges to the Arrays of Pannels of Jurors, and the Polls for want of Hundredors; for Prevention whereof, 'tis Enacted, That every *Venire facias* in the Tryal of an Iſſue in any Action or Suit in any of her Majeſties Courts of Record at *Weſtminſter*, ſhall be awarded of the Body of the proper County where ſuch Iſſue is tried. But this Act is not to extend to Appeals, Indictments, Preſentments of Felony, Murder or Treaſon, nor to Writ, Bill, or Information on penal Statutes.

Exception in Appeals, Indictments, *&c.*

This Act also provides; That a View may be had by Jurors, of Messuages, Lands or places in question, as shall be thought necessary by the Court. — View of Jurors.

Justices.

Concerning Justices of Gaol-Delivery, and *Oyer* and *Terminer*. *Vide Tit.* Gaol-Delivery. — Of Gaol-Delivery, *&c.*

Concerning the Power of Justices of Assize delivering Gaols of Felons and Murders, and where without a special Commission, and in what Case it must be special. *Pal. Pl. C.* 164. — Of Assize, *&c.*

Concerning the Power of Justices of Peace, by Commission to hear and determine Felonies, and Trespasses against the Peace. *Id.* 165. — Justices of the Peace.

How they enquire of Murder at their Sessions. *Ibid.* And how they may proceed upon Indictments taken before themselves, or former Justices of Peace. *Id.* 166. Also what Cases they may not proceed. *Ib. &c.* — Of their Proceedings, by Indictments, *&c.*

Where they take Examinations, commit Offenders, and bind over Prosecutors. *Id.* 168, 169. — Examinations.

Their Power to convict upon not repairing Highways and Bridges. *Id.* 144. *Kel. Rep.* 3. *Vide Tit.* Highways. *Vide Show. Rep.* 270. *Mod. Rep.* 38. — Highways.

They are to certify Recognizances, Bailments, *&c.* to the Sessions. *Id. fol.* 1. — Certifying Recognizances, *&c.*

Concerning their being turn'd out of Commission for taking insufficient Bail, or Bail where none ought to be taken. *Id.* 3. — Taking Bail.

To suppress Riots.

Justices, *&c.* may arm themselves and thers to suppress Riots, Rebellions, *Id.* 76.

Quære, Whether they may discharge, *&c.*

Whether Justices of the Peace may charge a Man arrested coming to the S sions? And it seems not, tho' two Judges gainst one inclin'd, that such Privilege ou to be allow'd. 1 *Lev. Rep.* 159.

Scandalous Letter.

A scandalous Letter is indictable bef the Justices of Peace, as a Libel. *Id.* 139.

Apprentice.

Where Justices of Peace may compe Person to take an Apprentice against own Will. *Show. Rep.* 77.

Idem 395. Upon a *Habeas Corpus* held, t Justices of Peace had no Authority to co mit to Prison an Overseer of the Poor, Overseer. not giving them a particular Account of M neys receiv'd and paid.

A Conviction before a Justice of Pe Hand-Gun. for keeping a Hand-Gun, not having 10 *per Annum*, and doth not say when, and cause it was not said *præd. Die & Anno*, he not 100 *l. per Annum*, it was quashed. 3. *Rep.* 280, 281. For the Time when he not the 100 *l. per Annum*, must be preci alledged.

That such a Person so shooting, can be convicted by a single Justice, unless h brought before him *instant'*, upon View the Offence. 4 *Mod. Rep.* 51.

That an Indictment before Justices the Peace for shooting in a Hand-Gun, d not lie, for they want Jurisdiction. *Ibid.*

The Court of *B. R.* have Authority, tho', *&c.*

Where a Statute appoints a Thing fin to be done by the Justices of Peace, yet Court of King's Bench may take Cogniza of it. 3 *Mod. Rep.* 95.

T

They have Power, by the general Words of their Commission, to hear and determine Offences upon any Statute which concerns the Peace. 4. *Mod. Rep.* 51. — By general Words.

'Tis said, a Justice is a Trespasser if he proceedeth irregularly in his Office, *viz.* by sending a Warrant to take a Felon, without Oath made of the Felony committed. 1. 349. — A Justice, Trespasser in his Office.

Justices have not Power to take Indictments upon penal Statutes, without express Power given to them in the Acts themselves. 1. 379. — Express Power to take Indictments, *&c.*

If an Offence is appointed by a Statute to be punish'd by the next Justice of the County where 'tis committed, Q. If it may be punish'd by another Justice of the same County? 1. *Saund.* 263. — *Quære* concerning the next Justice.

K.

King and Queen.

Vide *Indictment and Treason.*

King's Council.

THAT the King's Council are Prose cutors in the King's Case, *Kel. Rep.* 8

Long Parliament.

How the King's Death dissolved the Lon Parliament. *Id.* 14.

King *de Facto.*

Tho' not in Possession; yet is King *Facto & Jure.* Id. 15.

Concern'd more than Appellant.

That the King is more concern'd in In terest on the Death of a Man, than the Ap pellant. *Id.* 95.

Publishing the King to be an Heretick, *&c.*

See the Statute 13 *Car.* 2. 1. against suc as, during the King's Life, advisedly publi or affirm the King to be an Heretick or P pist, *&c.* or utter Words or Things to st up the People to the Dislike of the King Person or Government, *&c.*

Parliament not dissolv'd, *&c.*

Parliament not to be dissolved by Dea of the Queen, her Heirs or Successors, & 4 *Ann. ca.* 8. See the Abridgment of the St tutes. *Tit.* King and Queen, *per tot.*

L. *Larcen*

L.

Larceny.

ide, *Burglary*, *Felony*, *Robbery*, &c.

HIS is a Capital Offence, which re- fers to the Goods of any Perſon. It ivided into Simple Larceny, and Mixt- ceny; and Simple Larceny is again divi- into two Kinds, *viz.* Grand Larceny, ich is above the Value of 12 *d.* and Petit- ceny, which is under that Value. *H. P.* 0.

Larceny what.

Simple and Mixt.

gain, Simple Larceny is ſaid to be a fe- ious and fraudulent taking away by any ſon, of the meer Perſonal Goods of ano- r, not from the Perſon, nor out of his uſe, to the Value of 12 *d. Ibid.*

Simple Larceny what.

What ſhall be ſaid ſuch a felonious Ta- g, ſo as to make it Felony, and what not, how the Indictment muſt be laid. *Id.* 61.

A felonious Taking, what.

ow it relates to a Butler, Shepherd, a eſt, a Carrier, a Weaver of Yarn, the Hi- of a Horſe, and to a Servant going away h the Goods of his Maſter alſo when it extend to Apprentices, *&c.* and when *Id. & 62.*

To what Perſons it relates.

Of taking away another Man's Horſe out of aſture, under Pretence of a Replevin; and he felonious taking away of a Horſe from one

Taking a Horſe under Pretence of Replevin.

one that had feloniously taken him befo *Id.* 62.

Goods from a Wife.

Also concerning taking away Goods fr the Wife of another Person, with her W or against her Will. *Id.* 64.

Trover and Conversion.

If a Person finds Goods lost and conv them, though the Conversion were *An furandi*, yet no Felony. *Id.* 61.

How a Possession may become Felony.

Also he that hath a Possession by delive 'tis said, cannot thereof commit Felony. But if the Privity be determined, it may Felony; as in the Case of a Carrier. *Id.*

By Lodgers.

Trin. 1 *W. & M.* Where one too Lodging Room in a House furnished, had the Key of that Room delivered to h and afterwards run away with the Go 'twas then held no Felony. *Show. Rep.* But *Vide* the late Act in *Title Clergy*, wh makes it Felony.

Carrying away Sheets, &c.

What shall be a carrying away of She *&c.* by a Guest, of a Horse, with inten steal him, and of the Skins or Wool of Sh *H. P. C.* 64.

By what Persons.

By whom, *&c.* and who is such a Per as may commit Larceny. As an Infant der Fourteen, a Feme-Covert with her H band: And where by Coercion, and wh by Command of her Husband. *Id.* 65. of a Servants committing Theft by the ercion of his Master. *Id.* 66.

Of Goods Personal, or in the Reality.

What shall be said to be meer Pers Goods, and when they are in Reality Corn or Grass growing, *&c.* and when t are of a base Nature, as Mastiff Dogs, B *&c.* And of Hawks reclaim'd, when it m be Felony, and when not. *Ibid.*

What may be ſaid the Goods of another, where a Man hath a ſpecial Property, as Bailiff, &c. *aliter* where he hath a Proper- of a Thing *feræ Naturæ* only *ratione Loci.* .67. — Goods of another.

Of taking the Goods of a Chappel, &c. taking Treaſure Trove, Wrecks, &c. of ing a Bond, and of taking Fiſh in a Net, nk, or Pond, Felony; ſo of old Pidge- out of the Houſe. *Id.* 66. — Chappel Goods, Treaſure, Trove &c.

Of taking tame Deer, Coneys, Cranes, rtridge, Pheaſants, Swans, mark'd or un- rk'd if tame, young Hawks, or Pidgeons the Neſt, and of the Eggs of a Hawk or an; alſo of taking Things *Domitæ Naturæ*, Ducks, Hens, Geeſe, Turkeys, Peacocks, their Eggs; or Domeſtick Beaſts, as Hor- Mares, Colts, &c. or their Young. Fe- y. *Id.* 68. — Tame Deer, Partridge, &c. — Ducks, Hens, Geeſe, &c.

Where this ſhall be ſaid a felonious Taking, d of taking in one County and carrying o another. *Id.* 69. — Carrying into another Country.

Grand Larceny muſt be above the Value Twelve-pence, if it be under, 'tis Petit- rceny; yet it's ſaid, if Two ſteal Goods to Value of 13 *d.* this is Grand Larceny both. *Id.* 70. — Grand Larceny.

Where it will be Grand Larceny, though len at ſeveral Times, being put together in Indictment. *Ibid.* — Stolen at ſeveral Times.

Where the Indictment is of Goods to the lue of Ten Shillings, the Jurors may find cially to the Value of 10 *d.* and then 'tis Petit-Larceny, and no Judgment of ath. — Indictment of 10 *s.* and 10 *d.* only found.

And 'tis noted, that Petit-Larceny is Felo- though not of Death, and for this he ſhall — Petit-Larceny is Felony, tho' not, &c.

ſhall forfeit Goods, and be ſubject to Whi
ping, or other corporal Puniſhment; ſo
he that ſteals Goods, flies for it. *Id.* 70.

Mixt Larceny.

For Complicate and Mixt Larceny. Se
Tit. Robbery.

Pick-pockets.

Larceny from the Perſon without puttin
in Fear, which may be either by pickin
the Pocket, or cutting the Purſe ſecretl
If the Indictment purſue the Statute of 8 *Eli*
c. 4. he is ouſted of his Clergy; but if it
under 12 *d.* then it remains Petit-Larcen
as before. *H. P. C.* 75. *Vide* Clergy.

If not *Clam & Secretè*, nor with Terror.

If the Larceny be neither *Clam & S*
cretè from the Perſon, nor with Terror, n
ſo laid in the Indictment, nor ſo found
the Jury, then Clergy is allowed. *Ibid.*

Not by Wife with Husband.

That the Larceny can't be committe
by a Wife joyntly with her Husband; *cont*
of Murder. *Kel. Rep.* 31.

Larceny from the Houſe of a Ma

Of Larceny from the Houſe of a Ma
which is robbing any Perſon in their Dw
ling-Houſe, the Owner, his Wife, or Ch
dren, or Servants being within, and put
Fear, ouſted of Clergy in caſe of Convictio
together with Acceſſaries before. *H. P. C.*

Tho' no Perſon in the Houſe.

Felonious taking of Goods to the Value
5 *s.* out of any Dwelling-Houſe or O
Houſe, though no Perſon within, ouſted
Clergy. *Ibid.* Vide *Tit.* Clergy.

Larceny and Robbery, what.

What ſhall be ſaid a Larceny, and wh
Robbery. *Kel. Rep.* 69.

Lond

Casting down Rubbish, &c. into *London* Streets, whereby any are kill'd.

Manslaughter.

Cheated in a Tavern in *London.*

Privilege of *London* Juries.

Ifference when a Fact is done there (and Death enſues) and done in a untry Town, for in *London* there is a conual Concourſe of People paſſing up and wn the Streets; and therefore the caſting wn of Rubbiſh and Timber from a Houſe o the Streets, though the Party call out ſtand aſide, is like the Caſe where a Man ots an Arrow or Gun into a Marketce full of People, if any one be kill'd, it Manſlaughter; but otherwiſe in a Coun- Town, where there is no ſuch frequency Paſſengers, if a Man call out there to nd aſide, and take heed, and then caſts wn the Filth of Gutter, &c. this ſeems to but Miſadventure. *Kelyngs Rep.* 41.

One being cheated in a Tavern in *London*, d having given a Judgment for the Moy, it was moved in *B. R.* to reverſe the dgment for the Fraud, and the Court orred the Execution to ſtay, and adviſed to ing an Information againſt the Cheater, d alſo againſt the Vintner in whoſe Houſe was; and ſaid that the Privilege of *Lonners*, not to be returned of Juries out of e City, extended only to Caſes between rty and Party, and not where the King is Party. 1 *Lev. Rep.* 53.

M.

Maihem.

Vide Appeal.

Maihem, what.

THIS is a particular Crime for wh Appeal lieth, yet it is not Felony Death. *Hale Pl. C.* 133.

Cutting off a Hand, &c.

Cutting off the Hand, or ſtriking a Tooth, Maihem; but not cutting off Ear. *Ibid.* But ſee in Appeal by a late

The Judgment.

The Judgment is only Fine and D mages; and therefore if the Plaintiff re ver in Treſpaſs, it is a good Bar in App of Maihem. *Ibid.* *Sed vide* Appeal *and* C ting out Tongues, &c.

Malice, Envy, and *Hatred.*

Malice implied or expreſſed.

WHAT ſhall be ſaid to be Malice, ther Implied or Epreſſed. *Vide* M der.

Definition.

See alſo their Definition, Diſtinction, Import. *Kelyngs Rep.* 126, 127.

Implied.

Alſo Malice Imply'd defined. *Id.* 130.

Expreſs.

The like of Malice Expreſſed. *Id.* 126,

Vide Homicide, Manſlaughter, *and* M der.

Some brief Observations from the Statutes.

. *West.* 1. 28. 3 *E.* 1. No Clerk of the g, or of any Juſtice, ſhall receive the ſentment of any Church for which there Debate in the King's Court, without the g's ſpecial Licence, in pain to loſe the urch and his Service: And that no Clerk any Juſtice or Sheriff take Part in any ts, or uſe Fraud, whereby common Right y be delayed, in pain to be puniſhed, as reſaid, and more grievouſly if the Treſs require it. — Clerks of the King, and of Juſtices.

II. Stat. 1 *E.* 3. *Parl.* 2. 14. None ſhall intain Quarrels and Parties in the Coun-, to the Let and Diſturbance of the Comn Law. — Maintaining Quarrels.

III. Stat. 20. *E.* 3. 4. None ſhall maintain arrels ſave their own, in Pain to have ir Body, Lands and Goods to be at the ng's Pleaſure. — *Simile.*

IV. Stat. 1 *R.* 2. 4. No great Officer of King ſhall maintain Quarrels in the unty, in Pain of a Fine, to be impoſed the King and his Council, and no o- Perſon, in Pain of Impriſonment, and be fined at the King's Will; and if he the King's Officer, or Houſhold-Servant, ſhall alſo loſe his Office. — *Simile* by Great Officers.

V. Stat. 7 *R.* 2 15. The Statutes of 1 *E.* 3. 2. 14. 4 *E.* 3. 11. (which ſee in *Niſi*) 1 *R.* 2. 4. and 1 *R.* 2 9. (which ſee *Feoffments*) made againſt Maintenance and — Statutes put in Execution.

and Champerty, ſhall be duly put in E cution.

Simile. VI. Stat. 32 *H.* 8. 9. All Statutes wh concern Maintenance, Champerty, and E bracery, ſhall be duly put in Execution.

Buying pretended Titles. VII. None ſhall buy any pretended Ri or Title to any Land, unleſs the Seller h taken the Profits thereof one whole Y next before ſuch Bargain, in Pain that b the Buyer and Seller ſhall each of them f feit the Value of the ſame Land, to be di ded betwixt the King and the Proſecuto

Maintenance and Embracery. VIII. None ſhall unlawfully maintain Suit or Action, retain any Perſon for Ma tenance, embrace Jurors, or ſuborn W neſſes to the Hindrance of Juſtice, or Procurement of Perjury, in Pain to for for every ſuch Offence 10 *l.* to be divi betwixt the King and the Proſecutor.

Pretended Title may be. IX. Howbeit, purchaſing of a preten Title by him that is already lawfully p ſeſſed of the Thing whereunto Title is ma is lawful.

Proclamations. X. Proclamations ſhall be made at Aſſizes, of the Statutes made againſt Ma tenance, Champerty, Embracery, and lawful Retainers.

Proſecution. XI. The Offenders againſt this Act be proſecuted within one Year.

Maintenance by Officers. XII. *Weſt.* 1. 25. 3 *E.* 1. No Officer of King ſhall maintain Plea of Lands, or o Things, to have Part thereof, or other fit, by Covenant between them made, Pain of being puniſhed at the King's

Champerty by Officers. XIII. *Weſt.* 2. 49. 13 *E.* 1. The Chan lor, Treaſurer, Juſtices, or any of the Ki Council, Clerks of *Chancery*, *Exchequer*,

any Justice or other Officer, or any of King's House, Clerk or Lay, shall not ceive any Church or Advowson, Land or nement in Fee, by Gift, by Purchase, Farm, by Champerty, or otherwise, so g as the same Thing is in Plea, nor shall e any Reward thereof, in Pain to be pu- ed at the King's Will both Buyer and er.

Punishment and Fine.

XIV. Stat. 33 *E.* 1. made at *Berwick*. The ainted of Champerty shall suffer three rs Imprisonment, and be fineable at the g's Will; where you have also the Form a Writ for Remedy thereof, to be issued by *Gilbert de Thornton*.

Agreeing for Part of the Thing in Suit.

XV. *Artic. super Chart.* 11. 28 *E.* 1. None l take upon him a Business in Suit, with Intent to have Part of the Thing sued neither shall any upon any such Cove- t, give up his Right to another, in Pain the Taker shall forfeit to the King so ch of his Lands and Goods as do amount the Value of the Part so purchased for Maintenance, to be recovered by any will sue for the King in the Court ere the Plea hangeth.

Allowance.

XVI. This shall not prohibit any to take unsel at Law for the Fee, or of his Pa- s or Friends.

Champertors what.

XVII. Stat. 33 *E.* 1. *Anno Domini* 1304. ampertors are such as move Pleas and s, or cause them to be moved, either themselves or others, and prosecute them their own Charge, to have Part of the ing in Variance, or Part of the Gains.

In Pleaders and Attorneys.

XVIII. Stat. 33 *E.* 1. *Anno Domini* 1305. ne of our Court, of Pleaders, Attorneys,

Stewards, Bailiffs or any other, ſhall take an
Plea or Suit to Champerty, or for Mainte
nance; in Pain that they, together with th
Conſenters thereunto, ſhall ſuffer three Yea
Impriſonment, and be fined at the King
Will. See alſo there the Form of a Wr
for the ſame Purpoſe, and alſo againſt Co
ſpirators.

Manſion-houſe.

Vide Burglary.

Manſion-houſe.

WHAT ſhall be ſaid a Manſion-hou
Hale Pl. Cor. 82.

Chambers.

That a Chamber in *Somerſet-houſe*,
Whitehall, no Manſion-houſe; *contra* of
Chamber in an *Inns-of-Court*. *Kel. Rep.* 2
Hale Pl. Cor. 237.

Manſlaughter.

Vide Homicide, Murder, *&c.*

Homicide *Sine Malicia.*

THIS is ſaid to be Homicide *ſine Malic*
as the killing another upon a ſudd
Falling out, or Provocation, or unjuſtifia
Act. *Hale Pl. Co.* 56.

What ſhall be ſaid a ſudden Falling o
what a ſudden Provocation, and what
unlaw

awful Act, whereupon Death enſuing
ll make Manſlaughter. *Ibid.* & 57.
f the unlawful Act be deliberate, and tend the perſonal Hurt of any immediately, by way of neceſſary Conſequence Death uing, is Murder. *Id.* 57. — May become Murder.
hat there is a particular Manſlaughter erein Clergy is ouſted by Stat. 1 *Jac.* . *Id.* 58. *Vide poſtea* Murder *and* Manghter. — Forfeiture.
pon Conviction of Manſlaughter, Goods forfeited. 3 *Mod. Rep.* 202.

rket-Overt. *Vide* Goods *and* Reſtitution.

Means.

the Indictment be of Poiſoning with one Poiſon, and it is proved with another; or killing with a Dagger, and it is ed with a Staff, yet it maintains the ctment; for it agrees in Subſtance and , though not in the Means. But if the ctment and Evidence differ in *Specie* is, as Indictment of Poiſoning, Evice of Stabbing, this maintains it not. Pl. C. 265. — Agreement in Subſtance, tho' not in the Means.

de ante Evidence, & *poſtea* Witneſſes.

Medietas Linguæ.

Vide Challenge, Jury.

Of what Aliens. BY the Stat: 28 *Ed.* 3. *cap.* 13. *Sect.* 2. Inqueſts made among Aliens and D nizens, be they Merchants or other, alth the King be Party, ſhall be one half De zens and the other half Aliens, if there ſo many in the Town, if not, ſo many are; and theſe Aliens are not required have 40*s.* Freehold *per Annum.* 9 *H.* *cap.* 29. *N.* 13.

Not in Treaſon. In no Caſe Indictors ought to be *de M diet' Linguæ.* No *Medietas Linguæ* in Tr ſon. *Ibid.*

Not in Appeal. In an Appeal by an Alien againſt an Ali no *Medietas Linguæ.* *Id.* 261.

Of what Nation. That the Jurors need not be of the ſa Nation by any Aliens. *Ibid.*

Miſpriſions.

Vide Treaſon.

Of two Sorts. MIſpriſions are ſaid to be of Two So Negative and Poſitive.

Negative. Negative, in not doing that they oug or of Omiſſion.

P

Poſitive, in doing ſome great Miſdemeanor ey ought not. *Hale Pl. C.* 126. — Poſitive.

For the Negative Miſpriſions of Treaſon, *vide eund.* 127. and for the Judgment erein. *Id.* 128. — Negative Miſpriſions.

Concealment, where High-Treaſon, and ere Miſpriſion only. *Kel. Rep.* 17. — Concealment

What is requiſite to make Miſpriſion of aſon. *Ib.* & 21, 22. Uttering of falſe ney knowingly, not Miſpriſion of Trea- but a great Miſpriſion, and finable. 33. — Requiſites to make Miſpriſion of Treaſon.

Miſpriſions Poſitive, or of Commiſſion, iſcovering of Evidence, *&c.* by one of Grand Inqueſt, diſſuading of Wit- s from bringing in Evidence againſt elon; reproaching a Judge, abuſing a r, *&c.* reſcuing a Priſoner from the Bar he Courts, ſtriking in Preſence of the g, or of Courts at *Weſtminſter*, *&c.* toge- with the Puniſhments thereof. *Hale Pl.* 31, 132. — Miſpriſions Poſitive in ſeveral Reſpects.

or the Miſpriſion of Felony, and the Pu- ment thereof; if a common Perſon, or Officer. *Hale Pl. C.* 129. — Miſpriſion of Felony.

oncealment of Felony, or procuring of Concealling thereof, is a Miſpriſion of y. *Ibid.* — Concealment.

Theft-boot, which is where the Owner his Goods again, or other Amends o proſecute, and the Puniſhment there- y Ranſom and Impriſonment. *Hale* . 130. — Where the Owner takes his Goods, or Amends.

Murder and *Manſlaughter.*

Vide ante Manſlaughter.

Is Homicide from Malice forethought.

MURDER is Homicide, volunt *ex Malicia præcogitata*; as when Perſon killeth another of Malice within a County in *England*, ſo he die within a Y and a Day. *Hale Pl. C.* 43.

Malice Implied or Expreſſed.

Who ſhall be ſaid a Perſon killing, what ſhall be ſaid Malice, either Implied Expreſſed. *Id.* 44.

Implied.

That Implied Malice is collected eit from the Manner of doing, or from Perſon ſlain, or from the Perſon killing.

In divers Reſpects.

What ſhall be Malice Implied in the ner of doing; what Malice Implied in ſpect of the Perſon kill'd; and what Ma Implied in reſpect of the Perſon killing.

Malice Expreſs in diversReſpects.

In Malice Expreſs, are conſiderable;

1. In the Principal in the firſt De that doth the Act.

2. In the Principal in the ſecond De that is preſent, and aiding, and abetting

3. In the Acceſſary before the Fact. *Id.*

Malice continuing.

Where if Malice be not continuing the Death, it is no Murder. *Id.* 49.

Beating intended, Death enſueth.

Where though the Malice did not ri high as Death, but intended only to the Party; yet if malicious, it is Murd Death enſue. *Ibid.*

Malitia egreditur Perſonam, &c.

That the Malice intended to one, *tur Perſonam*, and makes the Death of ther upon that Malice Murder, qualifie

Act in the ſame manner as if it had its due Effect. *Id.* 50.

What Malice.

That the Malice muſt be of corporal Dammage to the Party. *Id. Ib.*

Principals in the ſecond Degree.

As to the Principals in the ſecond Degree that are Aiding and Abetting, it is ſaid, *Hale Pl. C.* 52.

One comes by chance, and does not abet.

That if one come by chance, and does not abet, he is not Principal nor Acceſſary to Manſlaughter or Murder. What ſhall be accounted Malice in the Acceſſary before the Fact. *Id.* 52.

A Woman takes Potions to kill the Child within her.

That a Woman being quick with Child, and endeavouring by Potions to kill it, and its being born alive, and dying of that Potion, is Murder; the like if it die of a Stroke given by another; ſo Counſel or Advice before the Birth to deſtroy it, and after the Child is born deſtroyed accordingly, the Counſellor is Acceſſary. *Ib.*

Stroke given in *partibus Tranſmarinis.*

Concerning a Stroke and Death *in partibus Tranſmarinis*, and of the Stroke in one County, and the Death in another, how the Party ſhall be indicted. *Id.* 54.

Death within a Year and a Day.

That the Party muſt die within a Year and a Day of that Stroke or Poiſon, *&c.* *Id.* 55.

To kill ſuddenly without Cauſe, Murder.

That 'tis Murder to kill one ſuddenly without Cauſe. *Kel. Rep.* 27, 128. And that lieth upon the Party indicted to prove the ſudden Quarrel. 27.

Obſervations from the Statutes.

Where it ſhall be adjudged.

I. *Marlb.* 25. 52 *H.* 3. Murder ſhall n be adjudged where it is found Misfortun only, but where the Party is ſlain by Fel ny, and not otherwiſe.

Coroners Inqueſt.

II. Stat. 3 *H.* 7. 1. *Pars inde.* Every C roner, upon View of the dead Body, ſha enquire of the Perſon that hath done th Death or Murder, alſo of their Abetto and Conſenters, and who were preſent whe it was done, and the Names of the Perſon ſo preſent and found ſhall inroll and cer tifie.

Indictment not to tarry for the Appeal.

III. Here the Offender and his Acceſſa ries being indicted, ſhall be alſo arraigne at any Time within the Year at the King Suit, and the Proceeding thereof ſhall no tarry for any Appeal to be proſecuted with in the Year, as hath been heretofore uſed

Remanded upon an Acquittal.

IV. Albeit the Principal or Acceſſary b acquit within the Year and Day, yet ſha not the Juſtices ſuffer them to go at large but either remand them to Priſon, or le them be bailed, until the Year and Day b out: And whether they be attainted o acquit, yet the Wife, or next Heir of th ſlain, may within the Year and Day (th Benefit of the Clergy being not before had) proſecute their Appeal againſt them, any ſuch Attainder or Acquittal notwithſtand ing.

Clergy.

Appeal by Wife or Heir.

V. The Wife or Heir may com mence their Appeal in proper Perſon a any Time within the Year, before the She rif

ff and Coroners of the County where the ffence was done, or before the Justices of e *King's-Bench* or Gaol-delivery. And in y such Case (save only where Battel lieth) e Appellant (after the Suit so commenced) ay appoint an Attorney to prosecute it. Attorney.

VI. When one is slain in the Day-time, d the Murderer escapes untaken, the ownship that suffers it shall be amerced, d the Coroner shall inquire thereof upon e View of the Body dead. Township amerced.

VII. Also Justices of Peace have Power inquire of Escapes, and to certifie them to the *King's-Bench*; and after the Felones found, the Coroners shall deliver their quisitions before the Justices of the next ol-Delivery there, who shall proceed aainst the Murderers, or else certifie such quisitions into the *King's Bench.* Justice of Peace to inquire of Escapes.

VIII. A Coroner shall not be remiss, but ly execute his Office according to Law, Pain of 5 *l.* and shall have for his Fee pon View of the Body) 13 *s.* 4 *d.* of the oods of the Murderer, if he have any, not, then out of such Amercements as ll be set upon the Township that suffer- the Murderer to escape. Coroners Duty and Fee.

other

Other Obſervations.

Pardon. Where a Pardon of one ſhall extend the other. *Kel. Rep.* 24.

Difference.] See the Difference between Murder a Manſlaughter. *Id.* 40, 80, 121, 124.

Verdict. Where the Verdict was Manſlaughte tho' the Court directed Murder. *Id.* 50.

In Defence of a Room. Killing another in Defence of a Room a Tavern, juſtifiable. *Id.* 51.

Words no Provocation. Words no Provocation to leſſen the Crim from Murder to Manſlaughter. *Id.* 55, 6 130. What Provocation may extenuate t Crime. *Id.* 133. to 138.

Two in Company fall out ſuddenly. Two are in Company together, and f out ſuddenly, if they fight thereupon pr ſently, 'tis Manſlaughter; but if they qua rel, and after a reaſonable Time figh and one kills the other, 'tis ſaid to be Mu der; ſo if they appoint a Place to figh *Id.* 56.

Quarrel in the Morning, fight in the Afternoon. So quarrelling in the Morning, and me and fight in the Afternoon, and one ki the other. *Id.* 27. If it appear not to done upon the firſt Paſſion, 'tis Murd 1 *Lev. Rep.* 181.

Two quarrel, one runs in to aid. If two quarrel and fight, and anoth runs in to aid one of them, and kills t other, 'tis ſaid to be only Manſlaughte becauſe there was an actual Fighting a Striving with Violence. *Kel. Rep.* 61.

Reſcuing one ſpirited. So if it be in reſcuing a Youth ende voured to be ſpirited away. *Id.* 62.

Of

One is slain in endeavouring to part two that are fighting, where it may be only Manslaughter (which in Law is properly Chancemedly) because the Slayer knew not his Intent for want of Words, or charging of them to keep the Peace, *&c.* and when it may be Murder by giving them Notice of his Intention, or if the Party knew him to be a Constable, Watchman, *&c. Id.* 66, 67. *Vide postea*, where *A.* and *B.* fight of Malice, *&c.*

One is slain in endeavouring to part two fighting.

Of declaring the Intent.

If a Master correcting his Servant with a bar of Iron, kills him, 'tis Murder. *Kel. Rep.* 64. 133.

Killing a Servant by Correction.

So where a Husband strikes his Wife with a Pestle. *Ibid.*

His Wife by a Blow.

So where a Mother kills a Child by kicking and stamping on it. *Ibid.*

A Child, by kicking.

Where the Concealment of a Bastard-child found to be dead, will be a deniable Evidence that it was Murdered. *Id.* 32.

Bastard-Child found dead.

That Poisoning is Murder at Common Law. *Id.* 52.

Poisoning.

Where *A.* being arrested, endeavours a Rescue, and another of his Party kills the Officer, Murder in *A. Id.* 87. and so in one that comes in Aid of *A.* though he knew not of the Arrest. *Ibid.* But if *A.* yields to the Arrest, and others endeavour to rescue him and kill the Officer, not Murder in *A. Ibid.*

One arrested endeavours a Rescue, and another kills the Officer.

So where several attempting an unlawful Act, all are guilty of whatever happens upon it; so that if they be resisted, coming unlawfully to hunt in a Forrest, and one of the Resisters is kill'd, all are guilty of Murder, though all of them be not present,

Several attempting an unlawful Act, all are guilty.

preſent, or in the ſight at the killing. *Id.* 87.

Where one of them kills another.

Where *A. B.* and *C. &c.* attempting an unlawful Act, are reſiſted by the King's Officers, *A.* kills *B.* Murder in *A.* but not in *C. &c.* except they knew of *A.*'s deſign to kill *B.* *Id.* 111. 113.

Aliter if he attempt to kill the Officer.

But if *A.* had kill'd the Officer, or in attemping to kill him, had kill'd *B. C. &c.* Murder in all. *Id.* 114. 118.

Two fight of Malice, and kill another coming to part them.

A. and *B.* fight of Malice, *A.* kills *C.* coming to part them, Murder in *A. Quære* if ſo in *B.* *Id.* 114. Yet if a Conſtable or other coming to keep the Peace upon a ſudden Affray is kill'd, ſaid not to be Murder, except he declares or the Party knows he came to that Intent. *Id.* 115. 116.

Intent declared.

One killed by a random Stone, upon Perſons coming in a Riotous manner.

If *A.* &c. come riotouſly to the Houſe of *B.* and *C.* there endeavouring to appeaſe both Parties, is kill'd by a Stone thrown at Random over a Wall by one of *A.*'s Servants, 'tis Murder in them all, becauſe they came with Malice againſt *B.* and in Purſuance and Execution of that Riot, *C.* is kill'd. *Id.* 116.

Simile upon a felonious Deſign.

So where ſeveral deſign a felonious Act, and in doing thereof another is kill'd. *Id.* 117.

Maugridge's Caſe.

A. without Provocation throws a Bottle at *B.* and immediately draws his Sword, *B.* returns the Bottle, and therewith ſtrikes *A.* *A.* ſtabs *B.* 'tis Murder. *Id.* 120, 125, 126.

Felo de ſe.

That *a Felo de ſe* is not a Murderer within the Exception of Murder in the Statute of Pardons. 1 *Lev. Rep* 120.

Abetter.

He that kills a Man being found guilty of Manſlaughter, yet he that abetted may be found guilty of Murder. *Id.* 181.

A Man arreſted by an unlawful Warrant killed the Baily, but by Act of Parliament made afterwards the Warrant was made good, by Relation of the Act to the firſt Day of the Parliament, it ſeems by ſuch Relation that the killing was Murder. 1 *Lev. Rep.* 91. *Vide* 3. *Lev. Rep.* 255. Two Men quarrelling, the one threw a black Pot which he had in his Hand at the other, who thereupon inſtantly kill'd the other with his Rapier, Q. if the Pot be a Weapon drawn within the Statute 1 *Jac.* 1. againſt Stabbing. Note the Defendant had his Clergy.

Where Writ of Allowance on Pardon of Murder is neceſſary. *Show. Rep.* 282.

Baily arreſting with an unlawful Warrant, kill'd.

Relation.

Q. If a Pot be a Weapon drawn, &c.

Clergy.

Writ of Allowance.

Mute.

Vide *Challenge.*

TO Challenge above Thirty Five is the ſame as ſtand Mute, and he ſhall have pain *fort* and *dure*: But in an Appeal ſtanding Mute, Judgment is to be hang'd; ſo for Felony within the Verge, and in Treaſon it is a Conviction. *Ha. Pl. C.* 226. *Co.* 2. *Inſt.* 178. This forfeits no Land, nor Works by Corruption of Blood. *Co. Lit.* 391. Standing Mute, forfeits Goods.

That if in an Appeal for Felony the Priſoner ſtands Mute, he ſhall have the Judgment to be preſs'd; as in caſe he had been arraigned at the King's Suit, and ſtands Mute. *Kel. Rep.* 37.

Challange.

Mute.

Pain *fort* and *dure.*

Forfeiture.

In an Appeal for Felony.

It

Practice at *Newgate*, to tie their Thumbs.

It is said to be the constant Practice a *Newgate*, That if one stands Mute and refu ses to plead, to tie his Thumbs together wit Whipcord, that the Pain of that may com pel him to plead; and a Minister is some times sent to him to perswade him. *Ke Rep.* 27.

After Abjuration.

One abjured for Felony, and being afte taken in *England*, he stood Mute, and ad judged he should be hang'd. *Id.* 36.

Standing Mute after Not guilty pleaded.

That if a Felon pleads Not guilty, and af ter upon his Trial he stands Mute, yet i seems the Jury shall be charged with him and Evidence given for the King, and if h be found guilty, he shall be hang'd; fo

Judgment.

that after the Prisoner hath pleaded No guilty, he cannot hinder the Tryal, thoug a Case, 30 *Ass. Pl.* 3. &c. seems, that if h plead Not guilty upon his Arraignment and after stand Mute before his Trial, it i as if he had not pleaded. *Id.* 36.

But where he pleadeth Not guilty, an for Trial puts himself upon the Country yet if after he stand Mute, the Court sha proceed upon his Trial. *Id.* 37. *H. Pl. C.* 22 &c.

Mutiny.

Vide *Officers and Soldiers.*

N. *No*

N.

Noli Prosequi. Vide *Tryal.*

Non Compos:

If a Man that is *Non Compos*, kills another, this is Felony; so of a Lunatick, during Lunacy; but he that insites a Mad-man to another, is a Principal Murderer. If a man that is drunk kills another, this is Felony. *Hale P. C.* 43.

Felony, *&c.* *Homicide*, by *Non Compos*, Mad-man, drunken Man, *&c.*

O:

Oath:

Vide *Abjurations*, *Depoſitions*, *Examinations*, and *Witneſſes*.

Juſtices miſtaking the Oath of Obedience, for an Oath of Allegiance.

THE Oath which was called that of A legiance, by *Stat.* 3 *Jac.* 4. not pr perly ſo, but in truth an Oath of Obedien and therefore ſeveral committed by a J ſtice for refuſing that Oath as an Oath Allegiance; he thinking to bring them in a Præmunire, were diſcharged by t Court, becauſe there was no ſuch Oath Allegiance, *&c. Kel. Rep.* 38.

King's Evidence upon Oath.

Evidence for the King always upon Oa not ſo for the Priſoner, yet no known La to reſtrain it: But in ſome Caſes by *Statu* Evidence is to be upon Oath for the Pri ner, as 31 *Eliz. c.* 4. *Sect.* 2. and 4 *Jac. c.* 1. *Sect.* 27. Hale P. C. 264.

Aliter for the Priſoner. His Evidence muſt be plain.

Witneſſes in Capital Caſes againſt the Ki fot the Priſoner, cannot be ſworn, but t Jury is to take heed of what they ſay, a to be governed by it according to the C dibility of the Perſon, and of the Matt *Lord Chief Juſtice*, in the 5 *Jeſ. Try.* 45. *Co. Inſt.* 79. ſays, There is not ſo much as *Sc tilla Juris* againſt it, and that Evidence gainſt the Priſoner ſhould be ſo plain, t nothing could be anſwered againſt it; a

ther

erefore no Evidence to be ſworn againſt e King. 5 *Jeſ. Try. Ib.*

Now by the *Stat.* 7 *W.* 3. *c.* 3. it is pro-ded and enacted, That Perſons accuſed or ied for High-Treaſon whereby indicted y Corruption of Blood may be made, or iſpriſion of ſuch Treaſon, ſhall be admit-d to make any Proof by lawful Witneſs or itneſſes, who ſhall then be upon Oath.

To take a Man's Life away by a falſe ath, is Murder, by *Scroggs*, *Chief Juſtice*, *leman's Try.* 17.

de Commitment, Examination, Depoſitions, Informations, Treaſon, and Tryal.

Officers and Soldiers.

Y a late Act, 7 *Ann. R.* for puniſhing Mutiny and Deſertion, it is enacted, hat every Officer and Soldier in the Army, ted according to the Direction of former cts, or the preſent Recruit-Act, who ſhall, any time before *March* 25, 1710. cauſe y Mutiny, or Deſert, *&c.* ſhall ſuffer Death, ſuch Puniſhment as ſhall be inflicted by a ourt-Marſhal: Then directs how a Court-arſhal may be conſtituted and held. *p.* 111, 12. Puniſhing Mutiny, Court-Marſhal.

That no Field-Officer ſhall be tried by any nder the Degree of a Captain; and the ourt-Marſhal may adminiſter an Oath, *&c.* Degree of Jurors.

That any Officer or Soldier of her Maje-y's Army, *&c.* that ſhall Mutiny, or raiſe Mutiny.

Sedition, *&c.* or refuse to obey his super Officer, or lift up any Weapon against h

Felony. *&c.* guilty of Felony; and being arrai ed, ſtanding mute, or challenging ab 20 of the Jury, ſhall ſuffer Death, *p.* And ſuch Felonies may be determin'd in

B. R. Queen's Bench, *&c. Vide* Treaſon.

Deſerters. That Officers and Soldiers deſerting bey Sea, and coming into this Realm, or *Irel* may, upon Oath made before a Juſtice, ſent to the general Court-Marſhal in G *Britain* or *Ireland*; who, if they think fit, Example's ſake, may ſend ſuch Offen to the Regiment, *&c.* to which they bel to be proceeded againſt, *&c. p.* 129.

Acquittal, *&c.* Any Perſon, in any Court-Marſhal, quitted or convicted of the Crimes in laid Act, ſuch Acquittal or Conviction

A Bar. full Bar to any Indictment for the ſaid fence, *p.* 129.

Not to make Corruption of Blood. No Attainder for any Crime made ny by this Act, ſhall extend to make ruption of Blood to the Heir of ſuch O der, or debar the Wife of her Dower.

Marine Officers, *&c.* ſubject to this Act. The Officers and Soldiers of Marine ments, whilſt on Shore, and Perſons ployed in the ſeveral Trains of Arti ſhall be at all Times ſubject to the Pain Penalties of this Act. *p.* 130.

Pardon. On Receipt of a Warrant under the Manual, for preparing a Pardon for Fe the Judge may direct his Warrant t

Delivery. Sheriff, for the immediate Delivery ov the Priſoner to ſuch Officer under w they ſhall be liſted in her Majeſty's S in the Army or Navy; and the Pardon paſſed, *&c.* ſhall be of the ſame Force pleaded, *&c.*

So much of this Act as relates to Mutineers, Deſerters, *&c.* ſhall extend to Governours, or other Officers in Garriſons, *&c.* — Extends to Governours, *&c.*

Captains and Mariners deſtroying Ships, *&c. Vide* Clergy Statute. — Captains, *&c.*

Overt-Act.

Vide *Evidence*, Tit. *Treaſon*, *and* Tit. *Witneſſes.*

COmpaſſing the King's Death is Treaſon, by the Words of the Statute 25 *E.* And meeting in Council to raiſe a Rebellion, is an Evidence of Compaſſing, and an *Overt-Act* declaring the ſame. Lord *Ruſſel's Try.* 51, 57. — Compaſſing the King's Death, *&c.* — Evidence.

If a Man ſhould be indicted only for High-Treaſon in levying War, here a contriving to levy War is not a ſufficient Evidence, without any actual War levied; but if he be indicted for Compaſſing and Imagining the Death of the King, there the Contriving ſuch a War is an *Overt-Act* of the Compaſſing and Imagining, *Sidn. Try.* 56. — Upon levying War.

Though ſome Judges have been of Opinion, that Words of themſelves are not an *Overt-Act*, yet no Sage of the Law ever queſtioned but that a Letter was an *Overt-Act* ſufficient to prove a Man guilty of High-Treaſon, for *Scribere eſt Agere. Sidney's Try.* 36. — Words only. — A Letter.

Words will explain the Act meant.

Where Words are an Overt-Act to prov Treason, and where Words will explain th Meaning of an Act. *Kelyng's Rep.* 13.

Printing.

So Printing of Treasonable Positions is a Overt-Act. *Id.* 22, 23. &c.

Loose Words.

Loose Words spoken without Relatio to any Act or Design, are not Treason; b

Words of Persuasion.

Argument and Words of Persuasion to e gage in a Treasonable Design and Resolu on, and directing and proposing the be Way for effecting it, are *Overt-Acts* of Hig

Consulting together.

Treason; so consulting together for such Purpose, is an *Overt-Act* of High Treaso For it is the Imagination, the Compass and Designing the Death of the King, t is the Treason; but there is no Way of d covery of those Imaginations, in order

External Act.

punish a Traytor, but by some external A *Chief Justice in* Charnock's *Try.* 65. A that which is a sufficient Manifestat of such a Design, is an *Overt-Act*. See *Try.* 56.

Consulting to levy War.

Where consulting to levy War is an *Ov Act* to prove Compassing the King's De *Kel. Rep.* 20.

Actual levying War.

Where actual levying War may be lai an *Overt-Act* to prove the Compassing King's Death. *Id.* 21.

Conspiring, *&c.*

So conspiring with a Foreign Princ invade the Realm. *Id.* 20.

One *Overt-Act* laid, and another given in Evidence.

Kel. Rep. 8. It was resolv'd, That if one *Overt-Act*, tending to the Compa the King's Death, be laid in the Indictm that then any other Act which tends t Compassing the King's Death, might b ven in Evidence, together with that w

s laid in the Indictment; but this is al- Altered.
ed by the Statute of 7 *W.* 3 *ca.* 3. *p.* 11.

Id. 9. It was resolv'd, That there need not two Witnesses to prove every *Overt-Act*, nding to the Compassing of the King's eath; but one Witness to prove one *Overt-* so tending, and another Witness to ove another Act to the same End, were fficient. See after. One Witness to prove one, another to a Second.

Where acting as a Soldier, by command his Superior, is no Excuse for Treason. Acting as a Soldier.
13.

Id. 15. It was resolv'd, That the very onsultation and Advising together of the eans to destroy the King and his Govern- ent, was an *Overt-Act* to prove the Com- ssing of the King's Death. *Id.* 17. Consultation and advising an *Overt-Act*.

Where one of the *Overt-Acts* is not laid the Treason, but only as the *Overt-Act* to ove the Compassing of the King's Death; is a transitory Thing, which may be prov'd another County than where the Trea- n is laid in the Indictment. *Id.* 15. Where it is Transitory.

Where Treasonable Words may be an vert-*Act*, but then they must be so certain d positive, as plainly to denote the Inten- on of the Speaker. 3 *Mod. Rep.* 55. Where Words may be *Overt-Act*.

Vide Printing.

By Statute 7 *W.* 3. *ca.* 3. No Person shall e indicted, tried, or attainted of High- reason, whereby Corruption of Blood may e made, or Misprison of such Treason, but y the Oaths and Testimony of two lawful Witnesses, either both to the same *Overt-* *Act*, or one to one, and the other to ano- Two lawful Witnesses in High-Treason. Both to the same *Overt-Act*, or one to one, &c.

ther *Overt-Act* of the ſame Treaſon, unl
the Party willingly in open Court confe
ſtand mute, or peremptorily challenge
bove 35. *Vide* Treaſon.

Outlawry.

Vide Witneſs.

Grant of Outlaws Goods.

THE King grants the *Eaſt-India* St
of an Outlaw to a Creditor, the O
lary is revers'd. The King grants to the O
law all the Eſtate, *unde nobis non eſt reſponſ*

Paſſes not the Stock, *&c.*

It paſſes not the Stock; for by the Grant
the Creditor it was a Diſpoſition thereof,
therefore the King to be anſwered there
2 *Lev. Rep.* 49.

Execution in Treaſon.

How Execution is awarded thereon
Treaſon. *Vide Kel. Rep* 13.

Oyer and Terminer.

Juſtices of Oyer and Terminer.

COncerning the Authority of Juſtice
Oyer and Terminer, by Commiſſ
and not by Writ. *H. P. C.* 161.

Upon what Indictments.

Upon what Indictments they may p
ceed. *Ib.*

Commiſſion determin'd.

One Sitting, without Adjournment,
termines their Commiſſion. *Ibid.* So a

Revived.

perſedeas, as alſo a *Procedendo* revives

ut a new Commiſſion determines it. *Id.* 62.

That the Return of a Jury muſt be by precept, under Seal of the Commiſſioners. *Ib.* — Return of Jury.

Concerning a Special Commiſſion of Oyer nd Terminer, to ſit in one County to hear nd determine Treaſons in another. *Ibid.* — Special Commiſſion.

The General Commiſſion of Gaol-Delivery, *&c.* better than a Tryal by a ſpeial Commiſſion of Oyer and Terminer, *&c.* *Id. Rep.* 7. — General Commiſſion better.

That a Commiſſion of Oyer and Terminer ay ſit, enquire, and try, all in one Day. 77. — May do all in one Day.

P.

Pannel.

Vide Jury, Treason, *&c.*

Pannel severed.

HOW the Pannel may be severed, whe several Prisoners are in one Indi ment. *Kel. Rep.* 9. *Hale Pl. C.* 256.

More than 24 return'd.

More than 24 may be return'd upon t Pannel in Criminal Cases. *Kel. Rep.* 16.

The Prisoner in High-Treason to have a Copy of the Pannel.

By the *Stat.* 7 *W.* 3. *c.* 3. The Prisoner i High-Treason or Misprision, shall have Copy of the Pannel of the Jurors who a to try him, duly returned by the Sher and delivered to him two Days before t Trial. This shall be understood two D before the Trial after the Pannel is ma and not after it is returned into the Cou for then the Trial is to commence. *Ro wood's Trial* 13.

Papists Recusant.

Recusant.

ONE so proclaimed, is to appear Person at the Assizes, and to be Custody. *Kel. Rep.* 35.

Perjury.

Perjury. Vide Indictment and Informati

Pa

Pardon.

THAT the Power of pardoning all Offences, is an inſeparable Incident to the Crown and its Royal Power. *Showers* 284. — Power of pardoning.

That the King, at Common Law, had Power to pardon all Offences; and if Murder be named, there needs no *Non Obſtante*. *Ibid.* — Murder.

If the Power of pardoning Murders is taken away by Stat. *Ed.* 3. it takes away the Power even in Treſpaſſes. *Ibid.* — *Quære.*

The Stat. 13 *R.* 2. ſays, he ſhall not pardon by general Words, and 16 *R.* 2. is a Repeal of Part of the 13. as a Grievance to the People. *Id.* — Not by general Words.

Pardon good and ſufficient after Indictment, tho' it doth not recite the ſame, if it hath other Words tantamount, ſuch as, *ve fuit indictatus ſive non.* 2 *Jones Rep.* 56. *Vide* 1 *Vent.* 207. — Words Tantamount.

A Pardon takes away as well all Calumny as Liableneſs to Puniſhment, and ſets an Offender right againſt all Objection. *Reading's Try.* 53. It takes away not only *Pœnam*, but *Reatum* alſo. *Hob. Rep.* 81. — The Effect of a Pardon.

Concerning Pardons of Courſe, and of Grace. *Hale Pl. C.* 250. — Pardons of Courſe.

Pleading of Pardons, either General or Particular. *Ibid.*

A Pardon excepting Murder, does not except *Felo de ſe.* 1 *Lev.* 120. — Excepting, *&c.*

A

Pardon'd of Felony may be a Witneſs.

A Pardon of Felony (tho' after burni in the Hand) reſtores a Man to be a W neſs: But in caſe he had been convicted Perjury, and afterwards pardoned, t would not enable him to be a Witn 1 *Vent.* 349. See after.

No Bar of an Appeal.

Charter of Pardon, no Bar of an App *Hale's Pl. C.* 251. Yet the King may pard Burning in the Hand upon an App *Id.* 252.

Muſt ſue forth a Writ of Allowance.

He that hath a Pardon muſt ſue fort Writ of Allowance, ſpecifying that he h found Surety for his good Behaviour, wh he is obliged to do by the Stat. 10 E *c.* 3. and if he afterwards breaks the Pe the Pardon ſhall be void by the Stat. he hanged for the firſt Offence, unleſs

Pardon may be made void.

Pardon be with a *Non obſtante* to the Stat *Hale Pl. C.* 252. See after.

Pardon'd after Attainder, ſeems he may be a Jury-man or Witneſs.

Pardon after Attainder does not ma Felon capable of being a Jury-man, n Witneſs; *ſecus*, if burnt in the H 2 *Brownlow* 47. 2 *Bulſt.* 154. *Brown Craſhaw*'s Caſe urged in *Rookwood*'s T *p.* 41. but over-ruled, *p.* 42, 43. yet allo by the Chief Juſtice, That this may be jected againſt his Credit, but is not t urged againſt his being a Witneſs. *Ib.*

Vide Clergy & *Particeps Criminis* 1, 3

Obſervations from the Statutes.

No Writ to inquire whether one kill'd another *per Infortunium, &c.*

I. By Stat. of *Glouceſter* 9. 6 E. 1. Writ ſhall be granted out of the *Cha* for the Death of a Man, to inquire

r one did kill another by Misfortune, *Se defendendo*, or otherwiſe by Felony; t the Party ſhall be put in Priſon until coming of the Juſtices in *Eyre*, or Juſtices ſigned to the Gaol-delivery, and ſhall put mſelf upon the Country before them; and caſe it be found *per Infortunium*, or *Se defendendo*, upon Report thereof to the King the Juſtices, the King ſhall take him to Grace if he ſo pleaſe.

II. Stat. 2 *E.* 3. 2 *pars inde*, Charters of Par- n for Manſlaughters, Robberies, Felonies, d other Treſpaſſes, ſhall not be granted, where the King may do it ſaving his th, *viz.* where one Man killeth another his own Defence, or by a Misfortune. Pardon only where *per Infortunium*, or *Se defendendo*.

III. Stat. 4 *E.* 3. 13. The Statute of 2 *E.* 2. is confirmed. Statute confirm'd.

IV. Stat. 10 *E.* 3. 2. Pardons ſhall not be nted contrary to the Stat. of 2 *E.* 3. 2. *Simile.*

V. Stat. 10 *E.* 3. 3. He that hath a Par- n of Felony, ſhall within three Months er ſuch Pardon, find Sureties (before the eriff and Coroners) for the good Beha- ur, which ſhall within three Weeks after 3 Months be returned into the *Chancery* der the Seals of the ſaid Sheriff and Co- ners: And if the Party give not Security aforeſaid, or being bound, do bear him- otherwiſe againſt the Peace then he ght, the Pardon ſhall be holden for none. Sureties upon a Pardon.

VI. Stat. 14 *E.* 3. Stat. 1. 15. No Pardon the Death of a Man, or other Felony, ll be granted, but only where the King y do it ſaving the Oath of his Crown; d if any Pardon be granted againſt the Statutes How made void.

Pardon againſt former Statutes void.

Statutes made before this Time, it ſhall be holden for none.

Suggeſtions in a Pardon. VII. Stat. 27 *E.* 3. Stat. 1. 2. Pardons which have not in them the Suggeſtion where upon they are granted, and alſo the Suggeſtor's Name, ſhall be void; ſo are thoſe likewiſe which are granted upon falſe Suggeſtions.

Of the Offence. VIII. Stat. 13 *R.* 2. 1. In a Pardon, the Offence committed ſhall be ſpecified, otherwiſe it ſhall not be allowed.

Privy-Seal. IX. No Pardon of Treaſon or Felony ſhall paſs without Warrant of the Privy Seal.

When not to be allowed. X. If the Offence pardoned be afterwards found wilful Murder, that Pardon ſhall not be allowed. *Vide* Stat. 16 *R.* 2. 9.

Forfeiture upon Patdon to an Approver. XI. Stat. 5 *H.* 4. 2. If an Approver ſhall commit Felony after he is pardoned, he that procured his Pardon ſhall forfeit 100 *l.* whoſe Name ſhall alſo for that Purpoſe be inſerted in the ſaid Pardon.

Pardon and Seizure prevented. Pardon of one convicted of Manſlaughter, his Goods being forfeited, yet the Seizure prevented. 3 *Mod. Rep.* 202.

Special Words to reſtore. A Pardon of the Crime does not reſtore the Party to his Goods without ſpecial Words. 1 *Lev. Rep.* 120. *vide ante.*

Simile upon a *Felo de ſe.* If a Debt be due to a Man who becomes and is found *Felo de ſe*, and all Forfeitures and Sums of Money are afterwards pardoned and releaſed by an Act of Parliament, the Debt is releaſed and pardoned to the Debtor and not reveſted in the Adminiſtrator of *Felo de ſe*, if ſo be that there are not in

d Act ſpecial Words of Reſtitution. *Saund.* 362, 363.

If the King pardons Judgments and Exe- tions, a Judgment which comes to him Aſſignment is pardoned thereby. 1 *Lev.* p. 121. — Judgments pardoned.

Pardon of a Recuſant convict by the ng, takes away Diſability. 3 *Lev. Rep.* 2. — Recuſant convict.

What is pardoned by a Pardon of all fences. 1 *Mod. Rep.* 102. — Of all Offences.

One indicted for Murder was found uilty of Manſlaughter, and then offer'd to ead the King's Pardon, which upon Sight it *Pardon' feloniam & felonicam interfection'* the Man ſlain, *Non obſtante* Stat. 10 *E.* 3. & *R.* 2. which was agreed by all the Judges be a Pardon of Murder, notwithſtanding *Rickabee*'s Caſe by Rolls, during the late oubles. *Kel. Rep.* 24, 25. — *Pardon' Feloniam & felonicam interfection' &c.* — Is a Pardon of Murder.

Where a Pardon pleaded confeſſeth the ct, and is waved by pleading, Not Guilty ter. *Id.* 25. — Pardon waved.

Where one that had abjured, pleaded a rdon, which was held void becauſe the ing did not take notice the Party had abred. *Id.* 28. — Upon an Abjuration.

Idem 45. It is ſaid to be the Uſage, That r Felonies within Clergy, if the Priſoner ire it, not to give his Book, but to pro- re a conditional Pardon from the King, d ſend them beyond Sea to ſerve five ears in ſome of the King's Plantations, d then to have Lands there aſſigned them cording to the Uſe in thoſe Plantations r Servants, after their Time expired; with Condition in the Pardon, to be void if they — Uſage, if the Felon deſire the Book may not be given him to read. — Tranſportation. — Condition if they do not go.

they do not go, or if they return into *gland* during ſeven Years, or after, with the King's Licence.

Such as are reprieved with Intent to be tranſported, not to be perpetual Slaves.

But it is ſaid, That ſuch Priſoners as reprieved with Intent to be tranſported not ſent away as perpetual Slaves, but u Indentures betwixt them and partic Maſters to ſerve in our *Engliſh* Plantat for ſeven Years, and the three laſt Y thereof to have Wages, that they have a Stock when their Time is expi and that an Account be given thereof, by whom they are ſent, and of their A vals. *Id.* 4.

Particeps Criminis.

Approver pardoned.

L*Anghorn* urged at his Trial, That Approver who appeals, or accuſe thers to be otherwiſe guilty as himſel pardoned, the Appellee ought to be charged; and for the ſame Reaſon, if who have been *Participes Criminis* have their Pardons, they ought not to be acc ed ſubſtantial Witneſſes againſt a Priſon the Bar. But this was over-ruled. *horn*'s Trial. 27.

No Exception in Treaſon againſt *Particeps.*

No Exception to a Witneſs in Tre becauſe they have been concerned, by own ſhewing in the ſame Crime; for are the moſt proper Perſons to be Evid none being able to detect ſuch Cou but them. *Lord Ruſſel*'s Trial, 62.

Simile.

Particeps Criminis, whether pardone not, admitted as a Witneſs for the

High-Treaſon. *Sidney*'s Trial, 13, 30. So ſo upon a Penal Statute. 2 *Jones Rep.* 155. he King and *Beniſon*. *Vide* Witneſs.

Peer.

Vide Baron, Treaſon, *&c.*

VIDE the Manner of the Trial of Peers before the Lord High-Steward. *Kel.* ep. 54. — Peers how tried.

That they can't wave their Trial by Peers. . 56.

Where the Verdict of the greateſt Num- er ſhall be good, ſo that twelve Peers or ore agree. *Id.* 56. — Their Verdict.

That the High Steward is not to ſpeak the Peers in the Abſence of the Priſoner. — Preſence of Priſoner.

. 57.

The Queſtion was, If the Lords agree ot of their Verdict that Day, whether ey are to be kept together, or may go to eir Houſes? And it ſeems they may go. *Ib.* — If the Lords agree not that Day.

And it was alſo agreed, That the Lords efore whom the Indictment is found, may e Peers on the Trial. *Ibid.* 58. — Tried by them before whom he was indicted.

A Peer found guilty of Manſlaughter, iſcharged without Reading, or being burnt the Hand. 1 *Lev. Rep.* 180. See Tit. *reaſon.* — Diſcharged without Reading, *&c.*

Piracy and *Depredation.*

Vide Clergy.

Now triable at Common Law.

PIRACY at Common Law, if convict was accounted Petit-Treason, if d by a Subject. *Hale Pl. C.* 77. But since tered by Stat. 25 *Ed* 3. and since that Stat made an Offence triable at Civil Law, 28. *H.* 8 15. But this last Statute alters

Offence not altered.

the Offence, but it remains only an Offe by the Civil Law, and therefore a Par of Felonies doth not discharge it, bu gives a Trial by the Course of the Comm Law. *Ibid.*

Extends not to Accessaries.

It extends not to the Accessaries, bu the Accessary were at Sea, triable at the vil Law; if at Land, by no Law. *Ibid.* Stat. 2 & 3 *E.* 6. extends not to it.

Not to Creeks, *&c.*

It extends not to Offences in Creek Ports within the Body of a County, bec punishable by the Common-Law: Th

Ferfeitures.

give Forfeiture of Life, Lands, and Go yet no Corruption of Blood, and subje *Paine, Fort, & Dure*, in case of standing m *Id.* 77, 78.

Piracy belongs to the Admiralty.

Goods taken by Pirates condemne *Scotland*, and being brought into *Eng* and a Suit for them here in the Admi after they were sold, the said Suit i Admiralty here adjudged not to be w the Statutes of *R.* 2. or *H.* 4. For the c nal Cause being of Piracy belongs to Admi

Admiralty; and that altho' the Goods were condemned in the Admiralty of *Scotland*, it altered not the Case as to the Jurisdiction of the Court here, *&c.* 2 *Lev. Rep.* 25.

How Piracies, Felonies, and Robberies committed in or upon the Sea, or in any Haven, Creek, or Place where the Admiral has Jurisdiction, may be tried according to Stat. 11, 12 *W.* 3. *cap.* 11. See the Statute. How Piracies may be tried.

See Stat. 5 *Ann. cap.* 34. for continuing the Laws therein mentioned, relating to the Poor, and to the Buying and Selling Cattle in *Smithfield*, and for suppressing of Piracy. Act continued.

Place.

Vide Evidence.

If the Indictment lay the Felony at one Place, the Evidence proving the Fact at another Place in the same County maintains the Indictment. *Hale Pl. Cor.* 264. Laid at one Place, prov'd at another.

Pleas.

Vide ante Auterfoits Acquit, *&c.* Bar, Demurrer, Issue, *&c.* Appeal, Indictment, *&c.*

As to Pleas to the Felony, they are either by Demurrer, or Pleas in Abatement and Bar, or the general Issue. *Hale Pl. C.* 253. What are Pleas.

Abatement for Misnosmer of Sirname.

As to Pleas in Abatement for Misnosme of his Sirname unto an Appeal, it goes i Abatement; but in case of Indictment, h shall be put to answer the Treason or Felony *Hale Pl. C.* 243.

Aliter of Christian Name.

But Misnosmer of the Christian Name goes in Abatement; and if it be confesse by the King's Attorney, or found, the Indict ment falls. *Ibid.*

Must give his true Name.

But then he must give his true Name, an by that Name he may be forthwith indicted *Ibid.* *Vide Tit.* Variance.

Pardon pleaded.

Concerning Pleading of Pardons, eithe General or Particular. *Id.* 252.

Appeal depending.

Appeal depending, not pleadable to a Indictment. *Kel. Rep.* 97.

By Attorney.

If a Criminal be permitted to plead to a Indictment by Attorney, 'tis *ex gratia Cu* and not *ex rigore Juris.* 1 *Lev. Rep.* 146.

Attainder pleaded.

In *assumpsit* Defendant pleaded in Abate ment an Attainder, Plaintiff replied a Pardo and concluded in Bar, *pet. indic. & dampn sua*, a Discontinuance. *Showers Rep.* 155.

Discontinuance.

Upon a special Plea he must plead over:

Regularly he that pleads any special Ma ter in Cases Capital, and confesseth n the Felony; if the Plea be found again him, the Felony notwithstanding shall enquired of, and therefore he shall plea over to the Felony. *Hale P. C.* 254. *Sec* where the Prisoner demurs to the Indict ment, for that amounts to a Confession the Fact. *H. Pl. Co.* 243. *Co.* 2. *Inst.* 178. *Vi* Clergy.

Poisoning

Poiſoning.

Vide Murder.

OF Principals and Accidents therein. *Kel. Rep.* 52, 53. Of Principals and Accidents therein.

The Reaſon of making the Statute 1 *E.* 6. . 12. was, becauſe that Way of killing by ſon did not come under the ancient finition of Murder; therefore by this ute it was enacted, That wilful Poiſon- of any Perſon, ſhould be accounted ful Murder of Malice prepenſed. *Id.* 125. *infra.* Wilful Poiſoning is wilful Murder.

Prayer for Trial.

MOTION to have the Prayer of a Priſoner committed for Treaſon, to ared, and that he might be tried; and *Cur.* you cannot make a Prayer here, uſe it is to be at the next Aſſizes for the . *Show. Rep.* 190. To be at the next Aſſizes, *&c.*

t 'tis a *Quære*, If it may not be taken unctive, and that the Prayer may be either the firſt Day there, or the firſt here. *Ibid.* *Quære.*

held, that it muſt be taken Reſpective, rwiſe all the Felons in all the Gaols in muſt be diſcharged. *Ibid.* Taken Reſpective.

Not by one bailed.

Alſo reſolved, That a Man bailed can make his Prayer. *Id.* 191.

Certiorari thereupon granted.

Vide eund. 214. Where upon Prayer the Defendant, a *Certiorari ad Informan Cur.* may be granted at any Time.

Preſentment.

Vide *Indictment, Juſtices.*

Upon the Juſtices View.

PReſentment of a Juſtice of Peace, u his own View, of a Way in the P out of Repair, Defendant pleads *non* Jury find 'twas no common High-way, *Show. Rep.* 270.

Not guilty. Q.

Q. If Not Guilty does not admit it a good Preſentment, and that it wa High-way. *Ibid.*

Evidence.

Where it is Part of the Preſentment they ought to repair, it ſeems they give it in Evidence as a Diſcharge. *Id.*

That the Preſentment is but in Natu an Indictment. *Id.* 291.

Printing.

Treaſonable Books, *&c.*

PRinting of Treaſonable and Sedi Books, an Overt-Act to make an Indictment for compaſſing the Death. *Kel. Rep.* 22, 23.

Pri

Principals in Murder, &c.

Vide Acceſſary.

THAT Principals may be abſent in Murder by Poiſon. *Kel. Rep.* 52, 53. *le Pl. Co.* 216. May be abſent in Poiſoning.

Principal abſent, yet guilty, tho' he that ve the Poiſon not guilty, by Reaſon of dneſs. *Kel. Rep.* 53. And guilty, tho' the Giver not.

Priſon-breaking, or *Rumper-Priſon.*

& Eſcape, Gaols, *& poſtea* Priſoners, *&c.*

WHAT is a Priſon within the Statute. *Hale Pl. C.* 107.

What is accounted a Breaking of it. *Id.* 108.

What is a Cauſe that requires a Judgt to make this Felony. *Id.* 88.

ut by Stat. 1 *Ed.* 3. *Nullus de cætero qui nam fregerit, ſubeat judicium vitæ vel brorum pro fractione Priſonæ, niſi cauſa pro capt' & impriſonat' fuerit tale judicium re-t. Id.* 87.

iſi cauſa, &c. and what ſhall be cauſe to ire *tale judicium. Id.* 108, 109.

hen it ſhall be Felony in the Gaoler, not in the Priſoner, *& è converſo*, and no Felony in either. *Ibid.*

When it may be Felony only, and whe Treaſon. *Id.* 109.

Where the Gaoler permitting voluntar Eſcape, ſhall not be arraigned till the Pri ſoner be firſt attainted. *Id.* 110.

Priſoners.

Vide Reprieve.

No Fetters in Treaſon.

PRiſoners for Treaſon, not to be in Fe ters at their Trial. *Kel. Rep.* 10.

Not to be diſcharged.

For Felony, not to be diſcharged duri the Interval of Seſſions, but on good B *Id.* 3.

Tranſportation.

Of the Tranſportation of Priſoners. *Id* 445.

Plea peremptory.

Where a Priſoner brought to Judgme pleads and is over-ruled, his firſt Plea is remptory. *Id.* 29.

Reſcue.

A Priſoner ſecretly help'd to eſcape, is Reſcue. *Id.* 45.

Vide ante Eſcape *and* Priſon-Breaking.

Not to be charged at the Suit of a Subject.

A Priſoner for the King ſhall not charged at the Suit of the Subject. 1 *L Rep.* 125. *Vide eund.* 146. Where the Co was to charge the Priſoner indicted w other Actions, which they would not p mit.

Eſcapers to be committed, *&c.*

By 5 *Ann. cap.* 9. Perſons taken by ver of 1 *Ann. Seſſ.* 1. *Stat.* 2. *cap.* 5. to be co mitted to the Sheriffs Priſon for Debt and if in Cuſtody by this or any form Act, any Decree of *Chancery* or *Exchequ*

where

hereby Money is decreed, shall escape, e Party may have the same Remedy a-inst the Sheriff, as if the Escaper had en in Execution; and it is lawful to take rsons on the Lord's-day, by Vertue of rrants granted on this or the former ct.

Remedy against the Sheriff upon Decrees.

Proof.

Vide Evidence.

TO prove a Hand-Writing by Simili-tude, and by those who have known Hand, though the Party was not seen to te it, was allowed sufficient Proof of reasonable Writing, in *Sidney*'s Case; for is said to be as much Proof as the Thing capable of, especially where Writing was und in his Possession. *Sidn. Try.* 51. Yet ey said, It had been declared in the Lady 's Case, to be no lawful Evidence in Cri-nal Cases. *Sidn. Try.* 32.

To prove a Hand-Writing by Similitude in Treason.

Provision and Præmunire.

BY *Stat.* 25 *E.* 3. *Stat.* 5. 22, He that purchaseth a Provision in *Rome* for Abbey or Priory, shall be out of the g's Protection, and any Man may do h him as with the King's Enemy. *But this*

Purchasing Provisions in *Rome*.

is altered by 5 El. 1. *which ſee in Abridgment Tit. Crown.*

II. The Statutes of *Proviſors*, 25 *E.* 3. Stat. made to prevent Collations of Benefices in *England* by the *Pope* to the *Proviſors*, Procurers thereof, as well Aliens as Denizens: And here, the Penalty was Impriſonment without Bail, until he ſhould make Fine to the King, and Satisfaction to the Party grieved, if he were taken; but if not the *Exigent* ſhould run againſt him.

Suing in a Foreign Realm *Præmunire.*

III. *Stat.* 27 *E.* 3. *Stat.* 1. *ca.* 1. A *Præmunire* is granted againſt ſuch as ſue in Foreign Realm, or impeach there any Judgment given in any of the King's Courts for any Matter whereof the King's Court may take Conuſance: The Penalty, is to be out of the King's Protection, to forfeit their Lands and Goods, and to be impriſoned, and ranſomed at the King's Will, if they may be found; but if not, they ſhall be put in *Exigent*, and outlawed.

Benefice of an Alien.

IV. *Stat.* 3 *R.* 2. 3. None ſhall take a Benefice of an Alien, nor convey any Money to him for the Farm thereof, in pain of *Præmunire.*

Alien purchaſing here.

V. *Stat.* 7 *R.* 2. 12. No Alien ſhall purchaſe a Benefice in this Realm, nor Occupy the ſame without the King's Licence, in pain of a *Præmunire.*

Out of King's Protection.

VI. *Stat.* 12 *R.* 2, 15. If any go out of the Realm to procure (by way of Proviſion) a Benefice within the Realm, he ſhall be out of the King's Protection, and the Benefice ſhall be void.

VII. *Stat.* 13 *R.* 2. *Stat.* 2, 3. A Confirmation of the Statute of Proviſors, 25 *E.* 3. and if any accept of a Benefice contrary to the ſaid Statute, he ſhall incur a *Præmunire*, and ſuffer perpetual Baniſhment. — Statute confirm'd. Baniſhment.

VIII. *Stat.* 16 *R.* 2. 5. None ſhall purchaſe Bulls, or other Inſtruments from *Rome*, or elſewhere, in pain to incur a *Præmunire*. The Crown of *Great-Britain* is ſubject to the ſame. — Purchaſing Bulls, *&c.*

IX. *Stat.* 2 *H.* 4. 3, and 4. Religious Perſons purchaſing Bulls from the *Pope*, to be exempted from Obedience or Tythes, ſhall incur a *Præmunire*. — *Simile.*

X. *Stat.* 7 *H.* 4. 8. No Proviſion ſhall be made by the *Pope*, nor Licence or Pardon by the King, touching any Benefice then full of an Incumbent. — Not Proviſion by the *Pope*, *&c.*

XI. 3 *H.* 5. 4. All Proviſions made by the *Pope*, and Licences and Pardons by the King, touching any Benefices full of an Incumbent, ſhall be void, and the Proviſors thereof ſhall incur a *Præmunire*. — *Simile*, and Licences and Pardons void.

Provocation.

Vide Murder.

WHAT ſhall be ſaid a ſudden Provocation. *H. P. C.* 57. *Kel. Rep.* 130. — Sudden Provocation.

What Provocation may extenuate the Crime. *Kel. Rep.* from 130 to 138. — How it may extenuate.

Q. *Quar-*

Q

Quarrelling. Vide *Words.*

Quashing.

Indictments not to be quash'd.

INdictment of Manslaughter not to b quasht upon Motion. 1 *Vent.* 110. No Indictments of Perjury, Nusance, or th like, but the Party must plead. *Id.* 370.

See Indictment.

R. Reprieve

R.

Reprieve.

NOT to be reprieved where Clergy is ouſted, but in open Seſſions, and not herwiſe, without the King's expreſs War- not, and not by Order of any of the Juſtices f Gaol-delivery. *Kel. Rep.* 4. — When in open Seſſions.

Concerning ſuch Priſoners as are Repriе- ed, with intent to be tranſported, *&c.* How be ſent away, *&c. Ibid.* — To be tranſported.

Reſcue.

Vide Arreſt, Eſcape, *&c.*

WHERE hindering a Felon to be ar- reſted is no Felony. *Ha. Pl. C.* — Hindering Arreſt.

But where it may be Felony or Treaſon reſcue the Felon after he is arreſted. *Ibid.* — Reſcue Felony.

But where only Fine and Impriſonment, the Principal be not attainted, or die be- re Attainder. *Ibid.* — Where only Fine, *&c.*

Where Reſcue out of the Cuſtody of the onſtable, *&c.* is Felony, altho' he was not t to Gaol. *Ibid.* — From the Conſtable.

A Felon ſecretly helped to eſcape, is a eſcue. *Kel. Rep.* 45. — Secretly help'd to eſcape.

Reſtitution

Reſtitution.

Vide Forcible Entry. *Tit.* Goods, and *Tit.* Judgments.

Reſtitution of ſtolen Goods or Money.

BY *Stat.* 21 *H.* 8. 11. Where a Felo robbeth or taketh away the Money o Goods of any, and is thereof found guilty or otherwiſe attainted by the Evidence give by the Party himſelf, or others by his Pro curement; in this Caſe the Juſtices of Gao delivery, or other Juſtices, before whom h is found guilty, or attainted, have Power t award a Writ of Reſtitution for the Mone or Goods ſo robbed or taken, in like manne as if the Felon were attainted at the Suit o the Party in Appeal.

Concerning the Sale of ſuch Goods in a Market-Overt.

Upon this Statute, it was alledged by Ju ſtice *Wyld*, That it gave Reſtitution of ſtole Goods to the Owner, in caſe the Thief b upon his Evidence found guilty; and tha notwithſtanding a Sale in a Market-Ove by the Thief of the Goods ſtolen, and that ſ was the Practice at the *Old-Baily*: But Tw Judges were of a contrary Opinion, becau at common Law, a Sale in a Market-Ove by a Party who hath no Property, ſhall bin the Right of the true Owner, *More Rep.* 36

Reſtitution of ſtolen Horſes, tho' ſold in Market-Overt, and no Proſecution.

And that Statute of 31 *Eliz. cap.* 12. I caſes of Horſes ſtolen, enableth the Own to have Reſtitution if he claims them withi Six Months after they are ſold by the Thi in a Market-Overt, and yet that is if th

Owne

Owner pay the Party who bought the Horſe in the Market-Overt ſo much as he will ſwear he paid *bona fide* for the Horſe; but that this Reſtitution of Horſes upon the Statute of 31 *Eliz.* hath no great Relation to that Reſtitution upon the Statute of 21 *H.* 8. they being of Two ſeveral Natures. *Vide Kelyng's Rep.* 35. &c.

So of ſtolen Goods, if Thief be convicted, *&c.*

Yet *Idem* 47. It is allowed upon further Conſideration, That if upon the Evidence of the Proſecutor, or Evidence proved by him, the Thief be convicted, the Owner ought to have Reſtitution, for that the Words of the Statute of 21 *H.* 8. *c.* 11. are general, that where the Thief is convicted at the Proſecution of the Party robb'd, there the Party robb'd ſhall have Reſtitution, and taketh no Notice whether the Goods be ſold in a Market-Overt or not, ſo that by the Statute the common Law is altered as to that Point. *Id.* 47, 48. And that Statute 31 *Eliz.* gives that kind of Reſtitution as to Horſes, although there be no Proſecution.

Not of long Uſage.

That this Reſtitution of ſtolen Goods was doubted till about 4 *&* 5 *Car.* 1. and then the Judges adviſing about it, did reſolve, That if the Party who loſt the Goods did Proſecute the Felon to Conviction, he ſhould have Reſtitution, notwithſtanding they were ſold in a Market-Overt; and that ever ſince that Time the Practice hath been accordingly: And ever ſince, if any one pleaded a Writ of Reſtitution in ſuch a Caſe, that he bought the Goods in a Market-Overt, the other Party preſently demurred unto it, and had Judgment. And that *Co. ſur Magna Charta*,

Plea.

Demurrer.

Charta, p. 714. is expreſs in Point, as in caſe of an Appeal at common Law, and ſo is the Statute of 21 *H.* 8. *Idem* 48.

Where the Party may take his Goods again.

It is noted, That if Goods be ſtolen, and not waived in Flight, nor ſeized by ſome of the King's Officers, as ſuſpected to be ſtolen, there the Party that is robb'd may take his Goods again, or bring an Action for them, although he doth not Proſecute. *Id.* 48. *Vide Co.* 5. *Rep.* 109. Foxley's *Caſe*. *Stamf. Pl. Cor.* 186. *b.*

Where he ſhall not have them again.

But if the Goods be waived by the Felon in his Flight, or in caſe they be not waived, yet if they be ſeized by any of the King's Officers, as ſuſpecting them to be ſtolen, there the Party ſhall not have Reſtitution unleſs the Thief be convicted at his Proſecution. *Vide Stamf. Pl. Cor.* 186. *b.*

Where of ſuch only as in the Indictment.

And in ſuch Caſes, the Party ſhall have Reſtitution only for ſuch Goods as are expreſſed in the Indictment, and not for any other Goods, though ſtolen at the ſame Time, if they are omitted out of the Indictment, becauſe by that Omiſſion, the Thief might have eſcaped. *Kel. Rep.* 49. 5 *Co.* 110. *Stamf. Pl. C.* 165, 186, &c.

Reverſal. *Vide* Attainder. Judgments.

iots, Routs, and unlawful Aſſemblies.

THESE Three particular Diſtinctions are largely and learnedly treated of by *Pulton*, in his Treatiſe *de Pace Regis & ni. fo.* 24, 25, *&c.*

nd as to that of a Riot, he defines it to be, here Three Perſons, or above, aſſemble nſelves together to do any unlawful Act h Force and Violence; as to the Intent to or maim a Man, to pull down a Houſe, ll, Pale, Hedge, or Ditch, wrongfully; claim or take Common, or a Way in a ound; to deſtroy any Park, Warren, we-houſe, Pond, Pool, Barn, Mill, or k of Corn, *&c. Id.* 25. Riot.

hat an unlawful Aſſembly is where Three ſons, or above, aſſemble together, to the to do any of the Acts aforeſaid, or other ſuch unlawful Act, with Force Violence againſt the Peace; although do it not in Deed, but after their Aſbly they depart by their own Conſent, n ſome Fear conceived, or other Cauſe, hout doing any Outrage. *Ibid.* Unlawful Aſſembly.

Note, A Man, for the Safeguard of his ſe againſt Malefactors or Treſpaſſers, may mble his Friends for his Defence; but he not aſſemble to prevent a Beating threa- in his Preſence. *H. Pl. Cor.* 137.

hat a Rout is where Three Perſons, or a- , do aſſemble themſelves for the Re- e of their own common Quarrel: As if the Rout.

the Inhabitants of a Town do assemble gether to pull down a House, Wall, Pa Ditch, or other Inclosure of a Park, Pastu or Close, or the Head of a Pool, where th wrongfully pretend to have Title of Co mon, or a Way; or to beat or maim o Man, or more, that have done them all so publick Offence; and that if they or meet, proceed, and go forwards towa the Execution of any the Acts aforesaid, a do shew, by Armour, Gesture, or Spee that they mean to do any Violence, or terrify or fear any of the King's People, i a Riot, whether they put their intend Purpose in Execution or not. *Ibid. Poult. de P*

With Servants in Armour.

That a Man may commit a Rout in goi to the Sessions, Market, Fair, or other A sembly of Company, with his Servants Armour; tho' he hath no Intent to fight, commit any Riot, yet this is a Rout by t manner of his coming, and is contrary the Statute of 2 *Ed.* 3. 3.

Lawful Assembly fall into a Riot.

What Assemblies of three Persons, more, for Sports, are lawful. *Ibid. Sect.* But that if any of the said Company shall out with a Stranger, or some others of th own Associates, and then some of them take one Part, and some another, where a Riot is committed; then so many of bo Sides as shall take Sides, and be Parties that Quarrel, shall be deemed Rioters, a

Punishment.

be punished as such; but not the Resid *Id. fo.* 25. *b. Sect.* 6. *Stat.* 33 *H.* 8. 9.

Jury.

And that so it is, if a Jury be charged try an Issue, if some of them fall out a fight, this is no Riot in the Residue asse bling to a lawful End. *Poult. ibid.*

Neith

Neither is it any Riot where her Majſtys Officers, as Juſtices, Sheriffs, Conſtables, *&c.* take with them a ſufficient Number of Perſons to ſuppreſs Riots, Routs, *&c.* and to apprehend Traitors, Murderers, Robbers, or other Felons, to execute the Juſtice of the Law, and by that Means to preſerve Peace, according to 34 *Ed.* 3. 1. *&* 5 *Ri.* 2. 7. 17 *R.* 2. 8. 13 *Hen.* 4. 7 *&c.* made for the reſtraining, diſturbing, arreſting, and puniſhing of Riots, Routs, and unlawful Aſſemblies. *Pult. ut ſupr.* Sect. 6, 7, 8.

Officers taking many with them to ſuppreſs Riots.

Alſo by the 13 *Hen.* 4. 7. the Juſtices have Power to record ſuch Riots; and if the Treſpaſſers, *&c.* be departed, to make a Precept to the Sheriff, to return a Jury to make Enquiry of the Riot; the Forms whereof are ſet down *Pult. de Pace* 16. *Sect.* 8 *&* 9. Which Enquiry is to be ſo made within a Month after, and they are to hear and determine the ſame according to Law.

Recording of Riots by Juſtices.

They are alſo by the ſaid Statute, if the Truth may not be found out in manner aforeſaid, to certify the whole Fact, with the Circumſtances thereof, before the King and Council, that the Offenders may be put to anſwer, and be puniſhed at the diſcretion of the King and his Council. *Pult. Sect.* 10.

Fact certifi'd.

And if the Offenders traverſe the Certificate, the ſame and Traverſe are to be ſent into the King's Bench, to be tried and determined there, *&c. Id. Sect.* 10. *Note*, There is no traverſing the Record of a Riot made of the Juſtices own Sight. *Id.* 29. *Sect.* 27. See after.

Certificate traverſed.

Proclamation.

If the Offenders are not to be found, the Sheriff is to make Proclamation, and upon Return thereof, if the Offenders make Default, they are to be convicted. *Id. Sect.* 1 See this Statute, which also provides a Forfeiture of 100 *l.* to the King, by the Justices &c. which do not enquire of such Riot Also it's said, the Parties Agreement among themselves is no Discharge of the Inquisition that ought to be made. *Idem* 28. *Sect* 25.

Commission to enquire of the Default of Justices, &c.

Also the *Stat. of* 2 *Hen.* 5. 8. gives a Commission to indifferent Persons, at the Instance of the Party grieved, to enquire as well of the Truth of the Case, as of the Default of the Justices, Sheriffs, &c. Upon which Commission the Coroners are to return

Jury and Issues.

Jury, each having Lands worth 10 *l. per Annum* at least, with Issues for Non-appearance the first Time 20 *s.* the second 40 *s.* and the third Time 5 *l.* and for every Day after double; and if the Coroners make Default every of them forfeits 40 *l.* to the King's Use And in such Case, a Commission is to go out to the new Sheriff (if the Sheriff reputed in Default be discharged of his Office) to return a Jury and Issues, in Default under the like Pain of 40 *l.* The like concerning the Panel by Bailiffs of Franchises and Corporate Towns, having Justices. *Id.* 27. This Act also provides, that Riots shall be enquired

Enquiry at the King's Costs.

at the King's Costs; and that Rioters attained of great and heinous Riots, shall have one whole Years Imprisonment at the least, without Bail or Mainprize, and Petit-Rioters be imprison'd as the King and Council shall

thin

think good, and greater Fines to be ſet upon Rioters than in Time paſt.

By *Stat.* 19 *H.* 7. 13. the Jury return'd to enquire of Riots are to be 24, dwelling within the Shire, *&c.* having Lands and Tenements to the yearly Value of 20 *s.* of Charter-Land or Freehold, or 26 *s.* 8 *d.* of Copyhold, or of both, above all Charges, and the Iſſues upon the Jury or Juror making Default, are to be at the firſt Day 20 *s.* and at the ſecond Day 40 *s.* and for the Sheriff's Default therein he is to forfeit 20 *l.* to the King. 24 Jurors. Their Ability.

And if the Jury do not find ſuch Riot, *&c.* by reaſon of any Maintenance or Embracery, then the Juſtices and Sheriff ſhall, in their Certificate (to be made according to 13 *H.* 4.) certify the Names of the Maintainers and Embracers, under Penalty of 20 *l.* apiece. And every Maintainer or Embracer, duly proved, ſhall forfeit to the King 20 *l.* and to be committed to Ward, to remain at the Diſcretion of the Juſtices. In Caſe of Maintenance and Embracery. Penalty.

It is to be obſerv'd, That there is no Traverſe to the Record of a Riot made upon the View of two Juſtices; *aliter* if only recorded by one Juſtice. *H. Pl. C. r.* 137. Alſo this Recording of a Riot by the Juſtices of Peace, the Sheriff, or Under-Sheriff, is of that Credit in the Judgment of the Law, that if a Man be bound by Recognizance to keep the Peace, and after ſuch a Record of his being Party to the committing of a Riot is entred againſt him, in a *Scire facias* awarded againſt him upon the Recognizance, he ſhall not be allowed either to juſtify the Fact, The Credit of a Juſtice's Record of a Riot.

nor to plead Not Guilty thereunto. *Pult. de Pac.* 29. *Sect.* 27.

Proceſs to be made upon a Riot.

By the 2 *H.* 5. 9. Upon a Bill of Complaint for any Riot, *&c.* preferred by the Party grieved to the Lord Chancellor for the Time being, together with a Suggeſtion teſtifying the ſame, under the Seals of two Juſtices of the Peace and the Sheriff of the County, the ſaid Lord Chancellor ſhall ſend forth a *Capias*, returnable in the Chancery at a certain Day; by which, if the Perſons offending, or any of them, be taken, they ſhall be committed to Ward, or lett to Mainprize, at the Direction of the ſaid Lord Chancellor, and ſhall be proceeded againſt as the Law requireth: But if the Sheriff returns *Non eſt inventus*, a Writ of Proclamation (to be proclaim'd two County Court Days) ſhall go out, returnable in the King's Bench at a certain Day, before which if they render not themſelves, they ſhall be adjudged convict, and attainted of the Offence ſuggeſted.

Non eſt inventus return'd.

Offence within County-Palatine.

If the Offence be committed within the County-Palatine of *Lancaſter*, or other Franchiſe, where there is a Chancellor and Seal, the Lord Chancellor of *England* ſhall ſend Writ to the ſaid Chancellor, commanding him to make ſuch Execution as in this Act compriſed.

Juſtices Teſtimonial.

By *Stat.* 8 *H.* 6. 14. Two Juſtices of Peace of the Countries, where Riots are ſuppoſed to be committed, ſhall teſtify, that the common Fame runneth in the ſame Counties of the ſame Riots, before *Capias* ſhall be awarded, according to the Statute of 2 *H.* 5. 9.

And if the Offence be committed within a Liberty, where there is a Chancellor and a Seal, upon Information of the Riot, *&c.* from a Juſtice of Peace and Sheriff there, the ſaid Chancellor hath Power to award Writs of *Capias*, and Proclamation, as the Chancellor of *England* hath. If within a Liberty.

And all the King's Liege People, upon Warning, are to be aſſiſting to the Juſtices, Commiſſioners, Sheriff, and Under-Sheriff, upon Pain of Impriſonment, and to make Fine and Ranſom to the King. 2 *H.* 5. 8. Who muſt be aſſiſting.

Vide Forcible Entry.

Indictments of Riots, &c.

Ll. Recording of a Riot. *Pult. de Pac.* 26. *Sect.* 8. Recording.

Ll. A Precept to the Sheriff to return a Jury to enquire, *&c. Ibid Sect.* 9. Precept.

Ll. Indictment of a riotous Aſſault and Wounding. *Weſt. Preſ. of Fines*, &c. 136, 305. Aſſault.

Ll. Of a riotous Aſſault againſt the Keeper of a Park, or others. *Id.* 186. Park.

Ll. For a Riot, breaking a Houſe, and an Aſſault. *Raſt. Ent.* 383. Houſe-breaking.

Ll. For a Riot in carrying away Graſs mowen. *Weſt.* 189. Graſs.

Ll. Simile for breaking a Houſe, and taking away Goods. *Pult de Pac.* 30. Goods taken.

Ll. Simile concerning Hedges and Ditches caſt down. *Weſt.* 187. *Clift's Ent.* 384 Hedges and Ditches.

Ll. For a riotous Entry with Threats, and Treſpaſs with Cattle. *Weſt.* 152. Menaces.

Ll. Of Indictments for Riots, ſee *Dalton's Juſtice, cap.* 130. See alſo *Bolton's Juſtice* for *Dalt.* and *Bolt.* Juſtice.

Indictments of Force and Riots, from 72 to 113.

Peaceable Aſſembly.

NOTE: By *Stiles Pract. Reg.* laſt pub. 558. If divers Perſons do aſſemble together in a peaceable Manner, and after they are ſo aſſembled, do ſome riotous Act, this is a riotous aſſembling of them; for that the riotous Act ſhall have relation to their aſſembling together, ſo far as to conſtrue it to be with a riotous Intent, although it did not appear ſo at the firſt; for that the Intention of Parties are beſt interpreted by their Actions.

Commit a Riot.

Conſtruction.

Riot by Three.

That Two Perſons alone cannot make a Riot, but there muſt be Three Perſons together at the leaſt; but that Two Perſons may make a Conſpiracy as well as a greater Number. *Ibid.*

Conſpiracy by Two.

Robbery.

Vide Appeal, Clergy, Felony, Larceny *and* Piracy.

Robbery, what.

RObbery is ſaid to be a Complicated Mixt Larceny, and which hath a further degree of Guilt in it. 1. For that it a taking from the Perſon: And, 2. For that it is a taking out of the Houſe. *H. P. C.* 7

Putting in Fear.

Where the Perſon by the taking is put in Fear, then 'tis Robbery; but when the Perſon is not put in Fear, then 'tis Larceny from the Perſon. *Ibid.*

Then

Therefore Robbery is a Felonious and Violent taking away from the Perſon of another, Money or Goods of any Value, putting him in Fear, *violenter & felonicè* ſays the Indictment, and that diſtinguiſhes him from a Cut-purſe. *Ibid.*

A Violent taking of Money, &c.

Cut-purſe.

Vide Shower's *Rep.* 60. &c. Declaration on the Statute of Hue and Cry, that the Robbery was at *S.* near *quendam Locum*, &c. *infra* Hundred, without ſaying in the High-way, good, for *infra* Hundred ſhall refer to both, and the Robbery muſt be intended according to the Statute, which is in the Highway, and the Day-time.

Near *quendam Locum*, &c. good.

As to the taking away, an Aſſault to rob without any taking, it's ſaid is no Felony. *H. C. P.* 71.

Aſſault without taking.

Concerning a Thief's commanding one to deliver his Purſe, and he doth it, Robbery, though the Thief finding little in it, delivers it back. 72.

Command to deliver his Purſe.

Concerning his compelling a Man to ſwear to fetch him Money, and he doth it, and the Thief receives it, Robbery, *Ibid.*

Oath to fetch Money.

Concerning his cutting a Mans Girdle to which his Purſe is faſtened. If it fall to the Ground, no Robbery *Aliter*; if the Thief take it up, though he let it fall again, and takes it up no more.

Cutting a Man's Purſe-girdle, &c.

All that come in Company to rob are Principals, though one only actually do it, and though out of View of the other, and not the ſame Perſon they firſt aſſaulted, who eſcaped them, becauſe they all came to the Intent to rob. *Ibid.*

All that come to rob, Principals.

Taking the Persons Goods in his Presence, and putting him in Fear.

Taking a Thing of the Person's in his Presence, and putting him in Fear, is in Law a taking from the Person, as if he seeking to escape casts his Purse into a Bush, or let fall his Hat, and the Thief takes it, this is Robbery, *Id.* 73 of what Value soever, though under 12 Pence. *Ib.*

Difference between Robbery and Simple Larceny.

And though Robbery and Simple Larceny are both Capital: Yet they differ, 1. In that the Principal and Accessary before in Robbery are ousted of Clergy, but not in Simple Larceny. 2. In the Form of the Indictment. 3. In case of other Thefts, though from the Person, not Felony of Death unless it exceed 12 *d.* But here 'tis Felony of Death though never so small. *Id.* 74.

In several Respects

Under lawful Pretences.

Where Robbery is done by colour of lawful Pretences. *Kel. Rep.* 43, 47. as Pretence of Hue and Cry, *&c.*

Robbery by Fraud.

Of Robbery and Burglary by Fraud. *Id.* 62, 82 under Pretence of coming into the House to hire Lodgings.

Robbing a House before the Party that took it lodges in it.

Robbing a House before the Party that took it lodges in it. *Id.* 46. *viz.* in the Night after Goods brought into it, and whilst he is removing hither.

Clergy ousted by Statutes.

What is a Robbing of a House within the Statutes that ousted Clergy. *Id.* 67, 68, 69 *viz.* There must either be an Actual breaking of the House, or such a Violence to some Person there, that they are put in Fear and Dread, and that the Statute 1 *E.* 6. *ca.* 12 calls that breaking of Houses which the Statute 23 *H.* 8. & 5. *E.* 6 calls robbing of Houses, and so expounds them; and if Persons being in a House, open any Chamber Door and steal Goods, 'tis a

House breaking must be Actual or Violence, to put somebody in Fear.

actual

tual breaking of the Houſe, and takes ay Clergy. *Kel. Rep.* 55. 59.

What a Robbing of Houſes. *Id.* 69. Houſes.

What a Robbing of Perſons. *Id.* 70. He Perſons.
uſt be put in Fear; in an Action upon the tutes of *Winton*, the Oath was, That he was bb'd by 4 Perſons unknown to him, and Robb'd by 4 Perſons unknown to him.
s not that he knew not them, or any of em; yet 'tis all one, and good enough. *Lev. Rep.* 328. Vide *Tit.* Hue and Cry.

wo Servants robb'd of their Maſters Mo-y, and one takes the Oath, *&c.* not ſufficient the Money the other had. See after *rvant and a Quaker.*

Where the Maſter may have an Action Servant robb'd, Action by Maſter.
a Robbery done upon the Servant. 3 *Mod.* p. 287.

A Servant deliver'd Money to a Quaker to A Servant and a Quaker robb'd.
ry home for his Maſter; they were both bb'd, *viz.* the Servant of 26 *s.* and the aker of 106 *l.* the Servant made Oath of e Robbery, and the Quaker refuſed, the Quaker refuſed the Oath.
after brought the Action, and had Judg-nt for only 26 Shillings. 3 *Mod. Rep.* 287. *c.*

'Twas ſaid, the whole might have well Servant might have brought for the whole.
en brought by *Coxhead* the Servant alone, ut that it was too late, the Year being ex-red;) for where a Servant is robb'd of part his Maſters Goods, and part of his own, may have an Action, and recover Judg-nt for the whole. *Id.* 289.

That an Action lies againſt the Hundred, Action lyes, though Robbery not in High-way.
on the Statute of *Winchester*, though the bbery was not committed in the High-ay. 1 *Mod. Rep.* 221. Vide ante, near *ndam Locum*, &c.

Where

Several Defects help'd after Verdict.

Where the Hundred was ſued, and it not appear that the Pariſh where the was laid to be done was in the Hund or that it was done upon the High way, in the Day-time; and this was helped Verdict. 3 *Mod. Rep.* 258.

Obſervations from the Statute La concerning Robberies.

All Perſons to purſue Felons.

I. *Stat. Weſt.* 1. 9. *E.* 6. 1. All Per ſhall be ready (at the Summons of the riff, and Cry of the Country) to pu and arreſt Felons, in Pain (after Attai thereof) to make Fine to the King.

Default by Lords of Franchiſes, *&c.*

II. If Default be in the Lord or a F chiſe, the King ſhall ſeize his Franc but if in his Bailiff, the Bailiff ſhall be priſoned for a Year, and make Fine to King, and if he have not whereof, he ſuffer Two Years Impriſonment.

Coroners, *&c.* concealing Felonies, *&c.*

III. If the Sheriff, Corner, or other liff, for any Reward, Fear, or Favour, ceal; conſent to, or procure to conceal Felonies done within their Liberties, o not attach or arreſt them (where they and be thereof attainted, they ſhall one Years Impriſonment, and be griev fined to the King, if they have whe but if not, they ſhall ſuffer Three Years priſonment.

Freſh Suit to be made.

IV. The Statute of *Wincheſter*, *c* 13 *E.* 1. Immediately upon Robberies Felonies committed, freſh Suit ſhall from Town to Town, and from Count Country.

V.

V. *Cap.* 2. When need requires, Enqueſts ll be made in Towns by the Lord there, d then in the Hundred, after in the Coun-, and ſometime in Two, Three, or Four unties, when the Felony is committed the Diviſion of Counties: Here, if the untry will not anſwer the Bodies of the fenders, the People there ſhall be anſwer- e for all the Robberies done, and alſo for Dammages; ſo as the whole Hundred ere the Robberies are done, (together th the Liberties therein,) ſhall be anſwer- e for the Robberies there committed: d if they be done in the Diviſion of Two ndreds, both Hundreds together with ir Franchiſes ſhall anſwer them. And re the Country ſhall have but Forty Days en them to agree for the Robbery or fence, otherwiſe they are to anſwer for Bodies of ſuch Offenders.

Enqueſts to be made in Towns and Hundreds, *&c.*

Hundreds anſwerable for Robberies.

40 Days for Agreement.

VI. *Cap.* 4. In great Towns walled, the es ſhall be ſhut from Sun-ſet till Sun- ng, and none ſhall lodge without the wn from Nine a Clock until Day, unleſs Hoſt will anſwer for him: For which poſe, the Bailiffs of the Town ſhall make ch once every Fortnight at leaſt, and if find any ſuſpicious Perſon lodged with- againſt the Peace, they ſhall do Right ein. Again, betwixt *Aſcenſion day* and *baelmas*, Watch ſhall be kept all Night, m Sun ſet until Sun riſing, *viz.* in a with 6 Men at every Gate, in a Borough h 12 Men, and in every Town with 6 Men, according to the Number of the abitants there; if any Stranger paſs by m, he ſhall be arreſted until the Morn-

Gates of wall'd Towns to be ſhut.

Watch to be kept.

Perſons to be arreſted.

ing,

ing, when, if they have no Suſpicion o him, they ſhall let him go quit; but if o therwiſe, they ſhall deliver him to the She riff to be ſafely kept, until he be duly a quitted: Here, if he will not obey the A reſt, they ſhall levy Hue and Cry upon him and for ſuch an Arreſt of a Stranger, no ſhall be puniſhed.

Hue and Cry.

Highways to be enlarged, to prevent Robbery.

VII. *Cap.* 5. High-ways leading fro Market to Market ſhall be ſo enlarged, th there ſhall not be any Dike, Tree, or Bu within 200 Foot thereof; howbeit, t Act ſhall not extend to great Trees: He if by Default of the Lord in not removi his Dike, Under-wood, or Buſhes, a Robbery be committed, he ſhall be a ſwerable for the ſame; and if there be Mu der committed, the Lord ſhall make Fine the King's Will: And in caſe the Lord not able to fell the Under-woods, the Cou try ſhall help him. The Kings Deme Lands and Forreſts ſhall be alſo ſubject this Law; and if a Park be ſet too near High-way, the Pale thereof ſhall be remo to the Diſtance aforeſaid.

Conſtables to preſent Defaults.

VIII. *Cap. 6. Pars inde.* Two Conſta ſhall be choſen in every Hundred and Fr chiſe, who ſhall preſent to the Juſtices ſigned ſuch Defaults as they ſhall find the Country concerning Suits, Wat and High ways, and alſo ſuch Perſons lodge Strangers in uplandiſh Towns, whom they ſhall not anſwer: And the ſtices aſſigned ſhall preſent them, or the liament to the King, who will provide medy therein. Alſo Sheriffs and Bailiff Franchiſes are ſtraightly commanded

fo

low the Cry with the Country, and to ep Horſe and Arms to perform the ſame, pain to be preſented by the Conſtables to Juſtices aſſigned, and by them to the ng, as aforeſaid. Hue and Cry to be followed.

IX. *Artic. ſuper Cart.* 17. 28 *E.* 1. The tute of *Weſtminſter* ſhall be again ſent in- every County, to be read and publiſhed ur Times in the Year, and to be kept as ſtly as the great Charters, upon the Pains rein limitted; and for the better obſer- nce thereof, the Knights aſſigned in the unties to redreſs Things done againſt the eat Charter, ſhall be likewiſe charged th this, and have Warrant for the ſame cordingly. Statute of *Weſtminſter* to be kept as ſtrict as the great Charters.

X. *Stat.* 5 *E.* 3. 14. If any have Supicion Night-walkers, or other ſuſpicious Per- ns, (*then called Robertſmen, Waſters, or w-latches*), by Day or Night, they ſhall preſently arreſted by the Conſtables, and it be in a Franchiſe, they ſhall be deli- red to the Bailiffs; but if in a Guildable, en to the Sheriff, and ſhall be kept in Pri- n till the coming of the Juſtices to deliver e Gaol; and in the mean Time, the She- ff or Bailiff ſhall enquire of ſuch Arreſts, d return their Enqueſts before the Juſti- s at their coming together, with the uſe of their taking; whereupon the ſtices ſhall proceed to their Deliverance cording to Law: And here, if the Sheriff Bailiff neglect to enquire, they ſhall merced; and nevertheleſs the Juſtices ſhall ake Enquiry, and proceed to the Deliver- ce. Suſpicious Perſons to be arreſted and impriſoned. Defaulters amerced.

XI. *Stat.*

Statute of *Wincheſter* confirm'd.

XI. *Stat.* 28 *E.* 3. 11. The Statute of *W* *cheſter*, *Cap.* 1. & 2. 13 *E.* 1. is confirm *being in a manner the ſame with that*, *Word* *Word.*

Again confirm'd.

XII. *Stat.* 7 *R.* 26. The Statute of *W* *cheſter* is again confirmed, and it ſhall proclaimed Four Times a Year by the She himſelf in Perſon in every Hundred, in every Market by the Bailiffs thereof.

Forfeiture where the freſh Suit ceaſeth.

XIII. *Stat.* 27 *El.* 13. The Hundred wh freſh Suit ſhall ceaſe, ſhall anſwer half Dammages to the Hundred wherein Felony ſhall be committed, to be recove in any Court at *Weſtminſter*, in the Name the Clerk of the Peace of the Cou wherein the Felony was committed; here the Death or Change of the Clerk the Peace ſhall not abate the Suit.

Inhabitants to be taxed.

XIV. When in this Caſe Dammages recovered againſt one, or ſome few Inh tants of the Hundred, and the reſt refu contribute thereunto, Two Juſtices of Pe (1. *Qu.*) dwelling within or near the ſa Hundred, ſhall for the Levying thereof, a Tax upon every Pariſh within that H dred: According to which, the Conſta and Headboroughs of every Town ſhall the particular Inhabitants, and levy the ney upon them by Diſtreſs and Sale of Go and deliver the Money levied to the ſaid ſtices, or ſome of them.

Hundred diſcharged when, &c.

XV. No Hundred ſhall be charge when any one of the Malefactors ſhall be prehended, or when the Action is not ſecuted within one Year after the Rob committed.

XVI.

XVI. No Hue and Cry ſhall be deemed l, unleſs the purſuit be both by Horſe Foot. Legal Hue and Cry.

XVII. No Perſon robbed ſhall maintain Action in this Caſe, unleſs with all con- ient Speed he makes his Robbery known ome near Town, Village or Hamlet, within Twenty Days before the Action ught, make Oath before a Juſtice of e dwelling within or near the Hun- d where the Robbery was committed, ther he know the Parties that robb'd , or any of them; and if he know, ſhall r into ſufficient Bond before the ſame ice, to proſecute the Perſon or Perſons y him known, by Indictment or other- , according to the Law. Notice to be given of the Robbery.

XVIII. *Stat.* 39 *El.* 25. A Remedy for the abitants of the Hundred of *Henhurſt*, in County of *Berks*, for Recovery of ſuch s of Money as ſhall be gained from them, orce of the Statute of 22 *El.* 11.

XIX. *Stat.* 13 & 14 *Car.* 2. *cap.* 22. For enting Theft and Rapine by leud Per- called *Moſs-Troopers*, frequenting the ers of *Northumberland*, *Cumberland*, and adjacent Parts of *Scotland*; The Inhabi- of the ſaid Two Counties may be ged for Five Years by the Juſtices of the e for Reſiſtance of the ſaid *Moſs-Troop-* To prevent Theft and Rapine by *Moſs-Troopers.*

X. Provided, not to charge *Northum-* nd above 500 *l. per Annum*, and *Cum-* nd above 200 *l. per Annum.* And the Juſtices may appoint Men not exceed- go for *Northumberland*, and 12 for *Cum-* nd, for ſearching for, and apprehend- Charge upon *Northumberland* and *Cumberland.*

ing

ing the said Malefactors, and may issue Warrants for Collecting the Assessments; and every Justice of the Peace may examine Offences against this Act, and bind over the Offenders to Sessions.

Agreement for a Treasurer and Guarders.

XXI. The Justices impowred to appoint Treasurer to receive the said Moneys, and make Payment thereof, according to the Orders, and may agree and article with Persons by them employ'd, and take Security of them for safe guarding the same Counties.

Penalty of Defaulters.

XXII. If any Persons imployed in a Border-Service upon this Act, shall wilfully corruptly neglect to apprehend or bring to Trial any Persons called *Moss Troopers*, they shall be uncapable of being imployed in the said Service, and further Fine and Imprisonment as the Justices shall think fit.

XXIII. The Justices may lessen the Charge if they see the Cause. This Act to continue 5 Years. The Statute 4 *Jac. cap.* 1. & 7 *cap.* 1. touching Trial of Offenders flying out of *England* into *Scotland*, and *è contra* revived and put in Execution, continued *per* 7 & 8 *W.* 3. for 5 Years, *&c.*

Offenders flying out of *England* into *Scotland*.

Acts continued.

XXIV. By Statute 18 *Car.* 2. *cap.* 3. the Act of 14 *Car.* 2. *cap.* 22. shall continue for 7 Years from the Expiration thereof.

No Clergy.

XXV. Great, known and notorious Thieves and Spoil takers in the said Counties, during the Continuance of this Act, shall lose the Benefit of their Clergy; or otherwise the Justices of Assize, Oyer and Terminer and Gaol delivery, before whom such Offenders shall be convicted, may transport them to any of the King's Dominions in *Ame-*

Offenders may be transported.

not to return: Continued *per Stat.* 7 & 8 *W.* 3. for Five Years, *&c.*

XXVI. 29 & 30 *Car.* 2. *cap.* 2. The Two Acts of 14 *Car.* 2. *ca.* 22. & 18 *Car.* 2. *cap.* 3. shall continue for 7 Years, and from thence to the End of the First Session of the next Parliament. Acts further continued.

XXVII. The said Justices shall take Security of the Persons they imploy in the said Service, to answer Dammages sustained by their Default, *&c.* Security from Warders.

XXVIII. The Justices shall Yearly, and every Two Years at furthest, in open Court appoint Persons to be imployed in the said Service. Warders, *&c.* appointed.

XXIX. Every Person so employed, or as Treasurer for the said Service, are to take the Sacrament, and the Oaths of Allegiance and Supremacy, *&c.* Continued *per Stat.* 7 & 8 *W.* 3. for 5 Years. Oaths. Acts continued.

XXX. Statute 1 *Jac.* 2. *cap.* 14. The Three Acts last mention'd shall continue for 11 Years, and from thence to the End of the First Session of the next Parliament. Continued *per Stat* 7 & 8 *W.* 3. for 5 Years; and continued *per Stat.* 12 & 13 *W.* 3. *ca.* 6. for 11 Years, and to the End of the First Session of the next Parliament, and the said Acts declared to be publick Acts. Acts further continued, And made publick Acts.

S.

Sheriffs Turn.

Taking Indictments there.

COncerning his Power of taking Indictments of Felony in his Turn, *Virtute Officii*, under Seal of the Jury, which Indictments they must send to the Justices of Peace, who have Power to proceed thereon, as if taken before themselves. *H. P. C.* 174.

Sent to Justices of Peace.

Aliter of Presentments in Leet.

And it's said, the Court-Leet hath in effect the same Jurisdiction with the Turn, but Presentments of Felony before them are to be sent before Justices of Gaol-delivery. *Id.* 175.

Se Defendendo. Vide *Homicide.*

Sessions.

Vide Adjournment.

OF certifying Recognizances, Appearances, and Examinations thither *Kel. Rep.* 1, 2. *&c.*

Statutes

Statutes.

FElonies, *&c.* by Statute, mentioned in *Hales Pl. Cor.* & *Kel. Rep.* & *Vide Pult. de pace*, 129, 130. &c. Felonies by Statute. — Felonies, *&c.* by Statute.

Magna Charta, *Cap.* 9. & *Marlbridge*, *Cap.* 25. of killing *per Infortunium*. *Kel. Rep.* 23. — Killing *per Infortunium*.

West. 1 *ca.* 13. concerning Rape, (which was Felony at Common Law) made hereby but a Misdemeanour, but restored again by 3 *E.* 1. *c.* 34. *H. P. C.* 117. Vide *Stat.* 18 *Ed.* 3. *Caron.* 169. — Rape.

No Appeal given to the Party, where by Statute 6 *R.* 2. *c.* 6. the Appeal is given to the Husband, if none, to the Father, *&c.* — To whom the Appeal belongs.

By 11 *H* 4. 13. every one who aids in Rape, is a Ravisher, when under 10 Years, though she consent; by 18 *El. c.* 6. it is a Rape if above 10 Years, if she consent, not a Rape, though she consent after, and Clergy taken away by 18 *Eliz. ca.* 7. upon Conviction by Verdict, or Confession or Outlaw'd; — Aider in Rape. Consent.

and by 3 *H.* 7. *ca.* 2. taking a Woman against her Will and marrying her, Felony, and all Accessaries before or after made Principals by this Act, and Clergy taken away by 39 *El. ca.* 2. *H. P. C.* 117, 118. &c. — Taking and marrying a Woman against her Will.

Westminster 2. *Cap.* 13. of Bills of Exception. *Kel. Rep.* 15. — Bills of Exception.

Westminster 2. *ca.* 38. of the Return of Juries. *Id.* 16.

Againſt Pardons. 10 *Ed.* 3. *cap* 2. & 13 *R.* 2 *ca.* 1. again Pardons of Murder. *Kel. Rep.* 124, 125.

Tranſporting Silver, *&c.* 17 *Ed.* 3. 11. 15. Tranſportation of Silv or Importation of falſe Money mad Felon Offender hath Clergy. *H. P. C.* 122.

Clerks, how to becharged. 25 *Ed.* 3. *cap.* 25. Clerks to be charg with all Felonies at once. *Kel. Rep.* 41, 42, 10

Compaſſing, *&c.* 25 *E.* 3. *cap.* 8. Of Compaſſing the King Death. *Kel. Rep.* 20.

Stealing Falcons. 37 *Ed.* 3. 19. Stealing Falcons, *&c.* concealing the ſame after Proclamation, F lony, and Offender hath Clergy. *H. P. C.* 12

Of committing, *&c.* for Murder. 3 *H.* 7. *ca.* 1. Of committing or baili for Murder. *Kel. Rep.* 25, 91, 97, 103, 1

Kalenders. *H.* 7. *cap.* 3. Of Gaolers making Kale ders. *Id.* 3.

Conſpiracy againſt the King, *&c.* 3 *H.* 7. *cap.* 14. Imagining and Conſ ring to kill the King, or any of his Coun Clergy not taken away. *H. P. C.* 117.

Reſtitution of Goods, *&c.* 21 *H.* 8. *cap.* 11. Concerning Reſtituti of ſtolen Goods, 31 *Eliz. cap.* 12. Reſtitu on of ſtolen Horſes. *Kel. Rep.* 36, 48, 96.

Pow Dike. 22 *H.* 8. *c.* 11. 2 & 3 *P.* & *M. c.* 19. C ting Pow Dike, Felony, and Clergy. 23 *H* 8. *cap.* 1. & 5. & 5 *Ed.* 6. *cap.* 9. of pulli Clergy. *Kel. Rep.* 67, to 70. *Id.* 103.

Buggery. 25 *H.* 8. *ca.* 6. Revived by 5 *Eliz. ca.* Buggery with Man or Beaſt, without Ben of Clergy. *H. P. C.* 117.

Witneſſes in Treaſon. 1 *E.* 6. *ca.* 12. & 5 & 6 *E.* 6. *cap.* 11. 1 *Mar. cap.* 1. Of Witneſſes in Treaſon. *Rep.* 17, 49. Vide *Tit.* Treaſon, and Witneſſes.

Poiſoning. 1 *E.* 6. *ca.* 12. Of Poiſoning. *Kel.* 52, 125.

1 *Ed.* 6. *cap.* 12. Of breaking Houſes. *Kel. Rep.* 69. — Breaking Houſes.

1 *Mary*, *cap.* 12. Of pulling down Encloſures. *Id.* 75. — Pulling down Encloſures.

1 & 2 *P. & M. ca.* 4. *Egyptians* above 14 Years, remaining here a Month; and 5 *El. ca.* 20. takes away Clergy. *H. P. C.* 123. — *Egyptians.*

1, 2 *P. & M. cap.* 10. Of Trials in Treaſon. *Kel. Rep.* 18, 49. — Trials in Treaſon.

12 *P. & M. cap.* 11. Of counterfeiting Moneys. *Kel. Rep.* 5. *Vide Tit.* Coin. — Counterfeiting Monies.

12 *P. & M. cap.* 13. Of Examination of Priſoners. *Kel. Rep.* 19. — Examination of Priſoners.

5 *Eliz. ca.* 14. Forging a Deed after a former Conviction; for if a Man be convict or condemn'd of publiſhing a forged Deed, and after he forge a Deed, this is Felony; and if the Offence were after a former, but before Conviction thereof, no Felony. Clergy ouſted. *H. P. C.* 124. — Forging of Deeds.

8 *Eliz. cap.* 3. Sending Sheep beyond Sea after a former Conviction, Clergy allow'd. *H. P. C.* 124. — Sending Sheep beyond Sea.

8 *Eliz. cap.* 4. & 8 *Eliz. cap.* 7. Of Clergy allowed where may be put to anſwer other Felonies. *Kel. Rep.* 41, 42, 70. Of Robbery, none put in fear, Clergy; but ſee before, *Tit.* Burglary and Felony. *Id.* 102. After Clergy, if the Offence be heinous, the Court may inflict any other Puniſhment, not exceeding a Years Impriſonment. — Extends to all Perſons that can read. — After Clergy, additional Puniſhment.

14 *Eliz. cap.* 20. Concerning Gaoler compelling Priſoner by Dureſs to become Appellor, Felony, whether the Appellees be acquitted or not. *H. P. C.* 122. — Compelling Priſoner by Dureſs.

Jeſuits, *&c.* 2 *Eliz. cap.* 2. Receiving, retaining, or maintaining a Jeſuit or Popiſh Prieſt knowingly, Clergy excluded. *H. P. C.* 123.

Embezelling Armour. 31 *Eliz. cap.* 4. Embezelling the King's Armour, *&c.* Felony. *H. P. C.* 120.

Refuſing to make Abjuration. 35 *Eliz. cap.* 1. Felony refuſing to make Abjuration, or after Abjuration not to depart, in ſome Caſe Clergy excluded. *H. P. C.* 123.

Dangerous 39 *Eliz. cap.* 4. 1 *Jac.* 7. 25. Dangerous Rogue adjudged to the Gallies, and returning without Licence, Felony, but Offender hath Clergy, but branded Rogue, Felon, and no Clergy, *H. P. C.* 124. By 1 *Jac.* 7. inſtead of baniſhing or committing to the Gallies, he is to be branded on the left Shoulder with the Letter *R.* ſecond Offence Felony.

Robbing Houſes in the Day-time. 39 *Eliz. cap.* 15. Ouſting Clergy for robbing Houſes in the Day-time. *Kel. Rep.* 31.

Detaining Perſons in *Cumberland.* 43 *Eliz. cap.* 13. Detaining Perſons in *Cumberland*, *&c.* againſt their Will, and giving or receiving Blackmail, *&c.* Felony without Clergy. *H. P. C.* 125.

Stat. againſt Stabbing. 1 *Jac. cap.* 8. Of Stabbing. *Kel. Rep.* 28, 104, 136.

Polygamy 1 *Jac. cap.* 11. Of Polygamy. *Kel. Rep.* 27, 80, 104. & *H. P. C.* 121, *&c.* Felony. Offenders have Clergy.

Witchcraft. 1 *Jac. cap.* 12. Witchcraft. *H. P. C.* 117.

Going with a Plague-Sore. 1 *Jac. cap.* 31. For going with a Plague-Sore; but this diſcontinued. *H. P. C.* 122.

Oath of Allegiance. 3 *Jac. cap.* 4. Of the Oath of Allegiance. *Kel. Rep.* 38.

Conſpiring to levy War. 13 *Car.* 2. *cap.* 1. Of conſpiring to levy War, *&c. Kel. Rep.* 19.

Suppreſſing Conventicles 16 *Car.* 2. For ſuppreſſing Conventicles. *Kel. Rep.* 38.

Vide

Vide Show. Rep. 282. That now no *non abſtantes* are uſed, which always formerly were held ſufficient for the Statute that requires it. Now no *Obſtantes* uſed.

Now the Statute of Tythes is not recited, nor of Hue and Cry, and that for Tythes is always ſo. *Show. Rep.* 337. Stat. Tythes not recited.

That Acts of Parliament ought to be conſtrued according to the Intention of the Lawmakers, and ought to be expounded according to the Rules of the Common Law. 3 *Mod. Rep.* 63. 1 *Saund.* 240. Acts, how to be conſtrued.

That when an Act is penal, it ought to be conſtrued according to Equity. *Id.* 90, 157, 312. Penal-Statute.

And that the Preamble is the beſt Expoſitor of the Law. *Id.* 129, 169. Preamble.

That Statutes muſt have a reaſonable Conſtruction. 4 *Mod. Rep.* 271. Reaſonable Conſtruction

Where a Penalty is given by a Statute to a Proſecutor, ſo as he ſues within a Time preſcrib'd, a *Latitat* ſued forth is not a Commencement of ſuch Suit. 4 *Mod. Rep.* 130. *Latitat* no Commencement upon a Penalty.

5 *H.* 4. *cap.* 5. Of cutting out Tongues, and pulling out Eyes. *Kel. Rep.* 65. *H. P. C.* 119. Clergy not taken away, extends not to cutting off Ears. *Ibid. H. P. C.* 119. but ſee 22 & 23 *Car.* 2. 21. and Clergy taken away. Cutting out Tongues, *&c.*

8 *Hen.* 6. *cap.* 12. Stealing, carrying away, or avoiding Records, Felony. Acceſſaries, before made Principals, Clergy allowable. *H. P. C.* 119. Stealing or carrying away Records.

18 *H.* 6. *cap.* 19. Soldiers retain'd as is preſcrib'd in the Act, departing from their Captain without Licence. 2 *E.* 6. *c* 2. *ad idem.* Clergy excluded, 39 *Eliz. ca.* 17. See 7 *Ann.* *Vide ante* Officers and Soldiers. Soldiers departing from their Captains.

Wandering Soldiers.

Wandering Soldiers, Felons in certain Caſes, and excluded of Clergy. *H. P. C.* 121.

Exporting of Wool.

18 *H.* 6. *ca.* 15. Exportation of Wool or Wool-Fels. *Id.* 122.

Servants ſpoiling Goods, *&c.*

Embezelling Maſters Goods, *&c.*

33 *H* 6. Servants, after Deceaſe of their Maſter, riotouſly ſpoiling Goods, *&c.* Offenders ſhall have Clergy. By 21 *H.* 8. Servants embezelling Goods of their Maſters delivered to them, Felony. But the *Stat.* 27 *H.* 8. *ca.* 17. that took away Clergy, being repealed by 1 *E.* 6. *ca.* 12. they may have Clergy. *H. P. C.* 125.

Unlawful Hunting in Forreſts.

1 *H.* 7. *ca.* 1. Hunting unlawfully in Forreſts or Warrens with painted Faces by Night, and Reſcuers, *viz.* other than the Party arreſted, Felony. *H. P. C.* 120.

Captains and Mariners deſtroying Ships.

By *Stat primo Annæ Reginæ*, Captains and Mariners belonging to Ships deſtroying the ſame, to the Prejudice of the Owners or Merchants, ſhall ſuffer Death as Felons, without Benefit of Clergy. *Vide* Clergy, Felony, *&c.*

See after *Tit.* Treaſon.

Vide *Statutes Merchant, and Statutes Staple.*

Vide Fraud, and fraudulent Conveyances.

T. *Tales*

T.

Tales.

Vide *Jury and Jurors.*

WHERE the Plaintiff upon Trial may have a Tales. *H. P. C.* 257. — For the Plaintiff.

Where the Tales may be granted larger than the principal Pannel, as Forty Tales. *Ibid.* — Larger than Pannel.

But the ſucceeding Tales muſt be leſs than the former, except the firſt be quaſhed, and then the ſame Number with that which is quaſhed. And if any of the Jury die before ſworn, a new Tales grantable. *Ibid.* — Succeeding Tales.

Tales returnable immediate at the Gaol-delivery. *Kel Rep.* 7. — Returnable immediate.

A Tales may be without a Warrant in Informations, but not in Indictments without the Warrant of the King's Council. *Lev. Rep.* 223. — Without a Warrant.

Time.

Time.

Vide Evidence, Tryal, *&c.*

Jury may find generally.

IF the Indictment be of Felony, *&c.* one Day, tho' the Evidence be of another Day, the Jury may find generally gainſt the Priſoner, and leave the Perſo concern'd in Point of Time to falſify; the Jury may find the true Day upon the Verdict. *Ha. Pl. Cor.* 264.

Time falſify'd.

Year aſcertain'd.

Where the Year aſcertained, tho' not ledged in what King's Reign. *Kel. Rep.* 1

Time not material.

The Time of the Fact not material Treaſons. *Id.* 16.

Appeals.

Time of Appeals, is a Year and a Day af Murder. *Id.* 25.

Tranſportation.

The Time for Tranſportation, 7 Yea *Id.* 4.

Lands aſſign'd.

But after 5 Years, to have Lands aſſign *Id.* 45.

Vide Indictment.

For Indictment in Treaſon.

Time limited for the Indictment in Tr ſon by 7 *W.* 3. *cap.* 3. *Vide* Treaſon.

Townſhip.

Amerced.

AMerced for an Eſcape of a Felon Death of a Man. *Kel. Rep.* 5.

Tranſ

Tranſportation.

NOT to be perpetual, but only for 7 Years. *Kel. Rep.* 4. Such after 5 Years have Lands aſſign'd them in the Plantations. *Id.* 45. Not perpetual.

Treaſons.

Vide Miſpriſions.

TREASONS are ſaid to be, either High-Treaſon or Petit-Treaſon. *Hal. Cor.* 9.

High-Treaſon is ſaid to be diſtinguiſhed in- 4 Kinds. *Ibid.*

1. Concerning the King, his Wife, or ildren. *Ibid. &* 11.

2. That which concerns his Officers in the miniſtration of Juſtice. *Id.* 10, 17, *&c.*

3. That which concerns his Seal. *Id.* 10,

4. That which concerns his Coin. *Id.* , 19.

And as to theſe Kinds, *vide eund.* 11, 12, , *&c.*

Next theſe will appear more fully by the tidgment of the Statutes. See after.

Certain High-Treaſons made by Statutes, Pope: ncerning the Oath of Supremacy, extolling

ling Power of Biſhop of *Rome*, &c. *H. Pl.* 21, 22. 5 *Eliz. cap.* 1.

Prieſts. Abſolving Subjects from Obedience, & Prieſt coming into the Realm, and not ſu mitting in two Days, &c. *Ibid.*

When found. Treaſon may be found ſeveral Years b fore the Time alledged in the Indictmen *Kel. Rep.* 16.

Levying War. Several agree to levy War, and ſome them only do it, Treaſon in all. *Id.* 19.

Printing. Printing treaſonable Poſitions, a compa ſing the King's Death. *Id.* 22.

Witneſſes requiſite. As to the Witneſſes requiſite to prove *Kel. Rep.* 9, 18.

See alſo *Tit.* Witneſſes, and eſpecially t Statute of 7 *W.* 3. *ca.* 3. *For regulating Trials in Caſes of Treaſon*, &c. *Vide* E dence, Indictment, Peer, Overt-Act, W neſſes. &c.

Words. Where an Indictment may be for treaſon ble Words only. 1 *Lev. Rep.* 57. 3 *Mod. R* 53, 54.

Forfeiture. *Vide* 2 *Lev. Rep.* 170. Where it's ſaid, th an inſtantaneous Seiſin is not forfeited Treaſon.

Perſons tried muſt be found guilty, or acquitted. All Perſons indicted and tried for Hig Treaſon, muſt either be convicted of th Crime, or acquitted; they cannot be fou guilty of Miſpriſion of Treaſon. *Wakema Try.* 83.

Judgment given. The Judgment therein to be given by t Chief Juſtice. *Kel. Rep.* 11.

Forfeiture upon a Settlement made to Uſes. A Man ſettled a Term in Truſt for hi ſelf during his Life, and afterwards in Tr for ſeveral of his Friends, provided that he had any Iſſue of his Body at the Tim of his Death, the Truſt ſhould ceaſe, a

he Assignment to be to the Use of such ſſue: Provided also, that if he was minded o change the Uses, that he might have ower so to do by Writing in the Preence of two or more Witnesses, or by his ast Will; then he committed Treason, nd was attainted by Act of Parliament, nd died, having Issue Male at the Time f his Death, but without any Revocation f the Uses of this Settlement; and 'twas eld, that no more of the Term was forfeited than during his own Life only. *Mod. Rep.* 16, 17, 38, &c. See after.

Forfeiture only during Life.

Where one acting as a Counsellor only, ay be a Traitor. *Kel. Rep.* 12, 23. So cting as a Soldier, tho' by Command of is Superior Officer. *Id.* 13.

Acting as a Counsellor.

So if one shews his Liking or Approbaion. *Id.* 12.

Approbation

So the acting by Authority of Parliaent. *Id.* 14.

Acting by Authority.

Where Concealment is Treason, and here Misprision only. *Id.* 7. 21.

Concealment

Conspiring to levy War, made Treason y Stat. 13 *Car.* 2. *Id.* 19.

Conspiracy.

Where the bare forging the King's Coin, ithout uttering, is Treason. *Hale Pl. C.* 20.

Forging Coin.

Where uttering false Money knowingly, neither Treason nor Misprision of Treason, ut finable. *Id.* 33. But if he know the erson that coined it, or help him with nstruments or Tools to coin withal, or furish him with Silver for his Coining, and oney is made accordingly, this is Treaon; and in High Treason, every one that iveth Aid or Assistance to it, are Principals, for

Uttering it, &c. Knowingly, is Treason.

All Principals in Treason.

for there are no Accessaries in Treaso *Kel. Rep.* 33. *Hale Pl. C.* 128.

Forging foreign Money.

How it shall extend to Forging, *&c.* foreign Money. *Hale. Pl.* 20.

Pulling down Enclosures, *&c.*

Where pulling down Enclosures, brea ing Prisons, *&c.* is Treason, and where F lony. *Kel. Rep.* 75. *&c.*

Assembling to expulse Strangers, *&c.*

Assembling to expulse Strangers, remov Counsellors, reform Magistrates, deliver Pr soners, throw down Inclosures, *&c.* Tre son: And so with those that join wi them, tho' they know not their Inte *Id.* 76, 77.

A Rule of the Intention, *&c.*

Nothing Treason in the Intention by St tute, that was not Treason in the Exec tion at Common Law. *Id.* 76.

Treason by the Statute Law.

Compassing the Death of the King, *&c.*

I. Statute *De proditionibus*, 25 *E.* 3. *Stat. cap.* 2. To compass or imagin the Death the King, Queen, or Prince; to violate t Queen, the King's eldest Daughter unma ried, or the Prince's Wife; to levy War gainst the King, or to adhere to his En

Aiding his Enemies.

mies within the Realm, giving them Aid Comfort within the Realm, or elsewher

Counterfeiting Seal, *&c.*

To counterfeit the King's Great Seal, Privy Seal, or his Money; to bring fa Money into this Realm counterfeit accor ing to the Money of *England*, (knowing t said Money to be false) to merchandize make Payment with it: To kill the Cha

Killing great Officers in Execution of their Office:

cellor, Treasurer, or any Justice of eith Bench, Justices in *Eyre*, Juistces of Assiz or any other Justices assigned to hear a determin

ermine, being in Places doing their Offices, is by this Statute declared to be High Treason: And in the said Cases, that ought be adjudged Treason which extends to the King, or his Royal Majesty.

II. Forfeitures of Escheats pertain to the King, of whomsoever the Lands are holden. Forfeitures.

III. There is another Sort of Treason (*viz.* Petty-Treason) when a Servant kills his Master, a Wife her Husband, a Secular or Regular his Prelate to whom he oweth Faith and Obedience, in such Cases the Escheat pertains to every Lord of his own Fee. Petty-Treason, what. Escheat.

IV. If any other Case, supposed Treason, shall happen before any Justices, they shall defer the Judgment thereof, until the Case shall be declared before the King and his Parliament, whether it ought to be adjudged Treason or Felony. Supposed Treasons.

V. To ride armed with Men of Arms, with Purpose to kill, rob, or imprison another until he hath made Fine and Ransom, shall not be adjudged Treason, but Felony or Trespass, as hath been heretofore used: And if any such Attempt hath been heretofore adjudged Treason, and thereupon Lands seized into the King's Hands without Title of other Lords, they shall be restored to such Lords, saving to the King his Year and Waste. Riding armed with Purpose to kill, &c.

VI. Stat. 1 *H.* 4. 10. Treason shall not be adjudged otherwise than as it was ordained by 25 *E.* 3.

VII. Stat. 26 *H.* 8. 13. *Pars inde.* Treason committed out of this Realm, shall be enquired of in such County, and before such Persons as the King shall appoint by Commission, Treason committed out of the Realm.

miſſion, and upon every Indictment a
Preſentment ſo found and certified into t
King's-Bench, like Proceſs and other C
cumſtance ſhall be there had and made
gainſt the Offender, as if ſuch Treaſon h
been found to have been committed with
Proceſs. the Realm: Alſo all Proceſs of Outlaw
within the Realm againſt ſuch Offender (
ing reſient out of the Realm at the Ti
of the Outlawry prononuced) ſhall be
good in Law as if ſuch Offender had b
reſident within the Realm at the Time
the Proceſs awarded, and ſuch Outlaw
pronounced.

Forfeiture. VIII. Every ſuch Offender being law
ly convicted by Preſentment, Confeſſi
Verdict, or Proceſs of Outlawry, ſhall f
feit to the King all ſuch Lands, Tenem
and Hereditaments, which he ſhall have
any Eſtate of Inheritance in Uſe or Po
ſion, by any Right, Title, or Means, wi
the King's Dominions at the Time of ſ
Treaſon committed, or after.

Rights of others ſaved. IX. The Rights, Titles, Intereſts, Po
ſions, Leaſes, Rents, Offices, and other
fits of all Perſons, their Heirs and Succeſ
(except of the Offenders, or others claim
to their Uſe) are ſaved.

Falling afterwards into Lunacy. X. Stat. 33 *H.* 8. 20. If any Perſon c
mit High-Treaſon when he is of pe
Memory, and after Accuſation, Exam
tion, and Confeſſion thereof before an
the King's Council, ſhall fall into Lun
he ſhall be enquired of in any Cou
where the King by his Commiſſion ſha
ſign; and if he be there indicted, he
be there arraigned without his perſ

Preſe

Presence, and if he be found guilty, he shall suffer Death, and forfeit as if he had been of perfect Memory. But this is altered by 1, 2, *P. M.* 20. which see after. Altered.

XI. If any Person be attainted of High-Treason by the Common Law, or Statutes of this Realm, such Attainder by the Common Law shall be of as good Force as if it had been done by Parliament, and the King shall have as much Benefit thereby, *viz.* of Lands, Tenements, Hereditaments, Goods, Chattels, Uses, Rights, Entries, Conditions, Possessions, Reversions, Remainders, and all other Things of such Offender, and shall be as well adjudged in actual and real Possession of all such Things of the Offender which the King ought lawfully to have, or which the Offender ought or might lawfully lose or forfeit, as if he had been attainted by the Parliament, without any Office or Inquisition to be found of the same. Attainder of Treason by Common Law. As well as if attainted by Parliament.

XII. The Right, *&c.* of all others (except of the Offenders, *&c.*) is saved. Right saved.

XIII. Stat. 35 *H.* 8. 2. All Treasons, Misprision of Treason, and Concealments of Treason committed out of the Realm, shall be enquired, heard, and determined before the Justices of the King's-Bench, by lawful Men of the County, where the Bench shall then sit, or by Commissioners in such County as the King shall assign by lawful Men of the same County, in like manner as if the Offence had been committed in the same Shire where it is so enquired, heard, and determined: But here the Peer shall be tried by his Peers. Treasons and Misprisions out of the Realm. Peer.

Repeal of Statutes.

XIV. Stat. 1 *E.* 6. 12. All former Statute which make any Offences Treason, or Petty Treason, are repealed, save only what is made by 25 *E.* 3. *Stat.* 5. *cap.* 2. and this Statute.

King is supream Head.

XV. It shall be High-Treason to affirm Writing, Printing, or Deed, that the Kin is not Supream Head of the Church *England* and *Ireland*, or that any other But this Clause is repealed by 1, 2 *P.* & *M*

Interruption of the Crown.

XVI. It shall be High-Treason to interru any Person to whom the Crown is limite by 35 *H.* 8. 1. But this is also expresly pealed by the general Words of 1 *M. Sess.*

Compassing to depose the King.

XVII. If any compass to depose the Kin or do affirm, That he ought not to be Kin for the first Offence, he shall forfeit Goods, and suffer Imprisonment; at King's Will; for the second, he shall l the Issues of his Lands during Life, a suffer perpetual Imprisonment, and for third, shall be guilty of High-Treason. so much hereof as concerns Treason, Pe Treason, or Misprision of Treason, is repealed by the general Words of 1 *M. Se*

Writing, *&c.* that the King is an Heretick.

XVIII. Stat. 5, 6 *E.* 6. 11. It is Hi Treason to affirm by Writing, Printi Painting, Carving, or Graving, That King is an Heretick, Schismatick, Tyr Infidel, or Usurper of the Crown; or bellioufly to detain from the King an his Castles, Holds, Ships, Ordinances, tillery, or other Fortifications of War: this Part of this Statute is repealed expr by 1 *M. Sess.* 1.

Treason committed out of the Realm.

XIX. Treason committed out of the Re shall be enquired of in such County, be

before ſuch Perſons as the King ſhall appoint by Commiſſion, and upon every Indictment and Preſentment ſo found and certified into the *King's-Bench*, like Proceſs and other Circumſtances ſhall be there had and made againſt the Offender, as if ſuch Treaſon had been found to have been committed within the Realm. Alſo all Proceſs of Outlawry wirhin the Realm againſt ſuch Offender (being reſiant out of the Realm at the Time of the Outlawry pronounced) ſhall be as good in Law as if ſuch Offender had been reſident within the Realm at the Time of the Proceſs awarded, and ſuch Outlawry pronounced. Proceſs.

XX. If the Party within one Year after the Outlawry or Judgment given thereupon, yield himſelf to the Chief Juſtice of *England*, and offer to traverſe the Indictment or Appeal whereupon he was ſo outlawed, he ſhall be admitted to ſuch Traverſe, and being thereupon acquit, ſhall be diſcharged of the Outlawry, and all Forfeitures by Reaſon thereof. If Party yield himſelf.

XXI. The Offender in Treaſon, being lawfully convict thereof, ſhall forfeit to the King all ſuch Lands, Tenements, and Hereditaments, as he ſhall have of an Eſtate of Inheritance in his own Right, in Uſe or Poſſeſſion in the King's Dominions, at the Time of the Treaſon committed, or at any Time after. Forfeiture.

XXII. Concealment of Treaſon ſhall be deemed Miſpriſion of Treaſon. But *quære*, Whether this Clauſe be not alſo repealed by the general Words of 1 *M.* 1. Concealment of Treaſon.

Two Witneſſes. XXIII. None ſhall be attainted of Treaſon but by the Teſtimony of two lawful Accuſers, who ſhall be brought in Perſon before the Party accuſed, unleſs he will willingly without Violence confeſs the Offence.

Right ſaved. XXIV. Here the Right of all other is ſaved.

Dower loſt. XXV. The Wife ſhall loſe her Dower, where the Husband is attainted of Treaſon, ſo long as the Attainder continues in Force.

What Acts Treaſon. XXVI. Stat. 1 *M. Seſſ.* 1. No Act or Offence ſhall be adjudged Treaſon, Petty-Treaſon, or Miſpriſion of Treaſon, but ſuch as be declared to be ſo by 25 *E.* 3. *Stat.* 5. *cap.* 2.

Counterfeiting Coin, *&c.* XXVII. Stat. 1 *M. Seſſ.* 2. 6. To counterfeit any foreign Coin (made current in this Realm) or the Queen's Signet Manual, Privy Signet, or Privy Seal, ſhall be adjudged High-Treaſon; and all Counſellors, Procurers and Abettors thereunto, ſhall alſo be deemed Traitors.

Trial. XXVIII. Stat. 1, 2 *P. & M.* 10. Trial of Treaſon ſhall be according to the Courſe of the Common Law, and not otherwiſe.

Right ſaved. XXIX. The Right of all others is ſaved.

Concealment XXX. Concealment of High-Treaſon ſhall be adjudged Miſpriſion of Treaſon, and ſhall incur Puniſhment accordingly.

Trial. XXXI. Alſo in Caſes of High-Treaſon concerning Coin, and for counterfeiting the King or Queen's Signet, Privy Seal, Great Seal, or Signet Manual, ſuch Trial ſhall be obſerved as heretofore hath been uſed by the Common Law.

XXXII

XXXII. Stat. 1,2 *P. & M.* 11. If any Perſon bring from beyond Sea into this Realm, or any of the Dominions thereof, any falſe and counterfeit Coin of Money (allowed to be current in this Realm) knowing it to be ſo, with Intent to utter the ſame here by Merchandizing, or otherwiſe, both he and his Acceſſaries ſhall be adjudged Offenders in High-Treaſon; and he ſhall be adjudged and convicted, or attainted for the ſame by ſuch Evidence, and in ſuch Form as hath been uſed within this Realm before the firſt of *E.* 6. Bringing falſe Coin into the Realm. Acceſſaries.

XXXIII. Stat. 5 *El.* 11. Clipping, Waſhing, Rounding, or Filing (for Lucre-ſake) any of the proper Monies or Coins of this Realm, or the Dominions thereof, or of foreign Monies or Coins (allowed to be current here) ſhall be adjudged High-Treaſon; and the Offender herein, together with his Acceſſaries, being thereof attainted, ſhall ſuffer Death, forfeit all his Goods, and his Lands alſo during Life. Clipping, Waſhing, Rounding, *&c.*

XXXIV. They who have any Grant of Forfeitures of Lands, or Goods, within any Liberty or Precinct, ſhall in this Caſe alſo enjoy them. Grants of Forfeitures.

XXXV. Theſe Offences make no Corruption of Blood, nor Forfeiture of Dower: And here Trial of a Peer ſhall be by his Peers. No Corruption of Blood, *&c.*

XXXVI. Stat. 18 *El.* 1. If any Perſon ſhall (for Lucre-ſake) by any Ways or Means whatſoever, impair, diminiſh, falſifie, ſcale, or lighten the Coins of theſe Dominions, or the Coins of any other Realms (allowed to be current here, during the Time they Impairing and falſifying the Coin.

are ſo allowed) it ſhall be adjudged Treaſon, and the Offenders therein, their Counſellors, Conſentors, and Aiders, ſhall ſuffer Death, forfeit all their Goods and Chattels, and their Lands alſo, during Life.

Aiders, &c.

No Corruption of Blood

XXXVII. Howbeit this Offence ſhall cauſe no Corruption of Blood, or Forfeiture of Dower; and the Trial of a Peer ſhall be by his Peers.

Where no Reverſal of Attainder.

XXXVIII. Stat. 29 *Eliz.* 1. No Record of Attainder of Treaſon ſhall be reverſed where the Party attainted is executed for the ſame Offence.

Intending Death or Deſtruction, &c. againſt the King's Perſon.

XXIX. By Stat. 13 *Car.* 2. *cap.* 1. If any, during the King's Life, intend Death or Deſtruction, or any bodily Harm tending to Death or Deſtruction, maim or wounding, or Reſtraint of the King's Perſon, or to depoſe him from the Style or Honour of the Imperial Crown of any of his Dominions, or to levy War againſt him, or to move any Strangers to invade any of his Dominions under his Obeiſance, and any ſuch Intentions declare by Printing, Writing, Preaching, or adviſed-ſpeaking, ſuch Perſons being convicted upon the Oaths of two Witneſſes upon Trial, or otherwiſe attainted by Law, ſhall be adjudged Traitors.

Time of Proſecution.

XL. That no Perſon by Vertue of this Act ſhall incur any Penalty, unleſs he be proſecuted within ſix Months after the Offence committed, and indicted within three Months after ſuch Proſecution.

Witneſſes, &c. Face to Face.

XLI. The Witneſſes at the Offenders Arraignment ſhall be brought before him Face to Face.

By

Two Witnesses.

By the Stat. 1 *E.* 6. *cap.* 12. Two Witnesses are required in Cases of Treason, except Treason for Counterfeiting Coin. *Vide Hale Pl. C.* 262. *Et vide ante* 5 & 6 *E.* 6. 11.

Regulation of Trials.

And see Stat. 7 *W.* 3. *cap.* 3. intituled, *An Act for Regulating of Trials in Cases of Treason and Misprision of Treason*, which hath enacted several Matters in relation to such Trials; for which, see Tit. *Council*, *Evidence*, *Indictment*, *Copy*, *Oath*, *Overt-Act*, *Pannel*, *Witness*. But see after *pag.* 251, *&c.*

Time limited for the Indictment in Treason.

By the said Statute, there is a Limitation of Time for finding the Indictment, *viz.* within 3 Years after the Crime committed; excepted out of this Limitation, Persons designing or attempting any Assassination on the Body of the King, by Poison or otherwise: This Act not to extend to any Impeachment, or other Proceedings in Parliament, nor to Treason for counterfeiting the King's Coins or Seals.

Assisting the *French* King with Arms, *&c.*

By 3 & 4 *Ann. c.* 14. If any Person, during this War, shall send, transport, or deliver, *&c.* for the Use of the *French* King and his Subjects, any Arms, Powder, Bullets, *&c.* such Person shall be adjudged a Traitor, and lose and forfeit as in Cases of High-Treason.

Bearing Arms for him.

So for such as have gone or born Arms in the *French* King's Dominions, without Licence under the Privy Seal; the like of such who embark with Intent to go into the Dominions of the *French* King.

Benefit of 7 *W.* 3. *cap.* 3.

That Persons indicted or prosecuted for Treasons by this Act, shall be intitled to the Benefit of 7 *W.* 3. *cap.* 3.

Writing, &c. againſt the Queen's Right to the Crown.

By Stat. 4 *A. c.* 8. If any Perſon by Writing or Printing, affirm, That Queen *Anne* is not lawfully or rightfully Queen, or that any other Perſon or Perſons have any Right to the Crown, otherwiſe than according to 1 *W.* & *M. Parl.* 1. *Seſſ.* 2. *cap* 2. & 12 *W.* 3. *cap.* 2. (which in the Abridgment of the Statutes is ſet forth in the Title of. *Rights and Liberties*) or that the Kings or Queens of *England*, by the Authority of the Parliament, cannot make Laws to limit and bind the Crown, and the Deſcent and Government thereof: Every ſuch Perſon ſhall be guilty of High-Treaſon, and ſuffer Death and all Forfeitures as in Caſe of High-Treaſon.

Or that the Queen and Parliament cannot limit the Crown and Deſcent, &c.

Simile by Preaching, &c.

That if any Perſon by Preaching or Speaking ſhall affirm as aforeſaid, every ſuch Perſon ſhall incur the Penalty of *Præmunire* mentioned in the Statute of 16 *R.* 2.

Information to be given.

Proviſo, That no Perſon ſhall be proſecuted for Words ſpoken, unleſs Information be given upon Oath to one or more Juſtices of Peace in three Days after the Words ſpoken, and the Proſecution of the Offence be in three Months after the Information, and no Perſon ſhall be convict for ſuch Words ſpoken but by the Oath of two Witneſſes.

Proceſs.

Simile upon the Union of the Two Kingdoms.

Stat. 6 *Ann. cap.* 7. If any Perſon by Writing or Printing affirm, That the Queen that now is, is not lawful and rightful Queen of theſe Realms, or that any other Perſon or Perſons have Right to the Crown, (otherwiſe than according to 1 *W.* & *M. Seſſ.* 2. *cap.* 2. & 12 *W.* 3. *cap.* 2. & 5 *Ann.* *cap.*

cap. 8. for the Union;) Or that the Kings or Queens of *England* by Authority of Parliament, cannot make Laws to bind the Crown, Deſcent and Government thereof: Such Perſon ſhall be guilty of High-Treaſon, and ſuffer Death and all Pains, as in Caſe of High-Treaſon.

Extends to *Great Britain.*

The reſt of the Act, as to High-Treaſon, is the ſame as 4 *Ann. cap.* 8. only this Act extends to all *Great Britain.*

Trying Peers of *Great Britain* in *Scotland* for Treaſon.

By Stat. 6 *Ann. cap.* 23. For the Trial of any Peer of *Great Britain*, committing High or Petit-Treaſon, Murder or Felony in *Scotland*, Commiſſions may iſſue under the Seals of *Great Britain*, conſtituting Juſtices to enquire by the Oaths of good and lawful Men of ſuch County of *Scotland* as ſhall be named therein, of all ſuch Treaſons, Miſpriſions, Murders or Felonies committed by a Peer of *Great Britain*, which Inquiſition ſhall be taken in manner as Indictments before Juſtices of Oyer and Terminer of any County of *England*, and be proceeded on in the ſame Method as ſuch Inquiſition found before ſuch Juſtices, whereby any Peer is indicted for ſuch Offence.

Inquiſition.

Precept to return a Jury.

And ſuch Juſtices ſhall iſſue Precepts to the Sheriff of ſuch County to return ſo many good and lawful Men of the ſame County as may be ſufficient to inquire of the ſaid Offences, and 12 or more return'd being ſworn, ſhall be ſufficient to make Inquiry, and find any Indictment; and if ſuch Sheriff ſhall not ſummon a ſufficient Number, or if any Perſon ſummoned, does

Fines.

to

not appear, the Juſtices may impoſe Fines to be levied by Proceſs out of the Exchequer.

Treaſons, and Felonies, for Mutiny and Deſertion, determinable in *B. R.*

All Treaſons and Felonies mentioned in the Act 7 *Ann.* for *puniſhing Mutiny and Deſertion*, may be determined in the *Queen's Bench*, of good and lawful Men of the ſame County where the ſaid Court ſhall be kept or before ſuch Commiſſioners, and in ſuch County, *&c.* as ſhall be aſſigned by Her Majeſty, *&c.* in like manner as if the ſaid Treaſons, *&c.* had been committed within the ſaid County, *p.* 129. (*Vide* Officers and Soldiers.

Committed by a Peer beyond Sea.

Any Peer committing any of the ſaid Offences in Parts beyond Sea, and not tried for the ſame there, *&c.* and after his Return indicted of any Offence, thereby declared Treaſon or Felony, ſhall have his Trial by his Peers as accuſtomed. *p.* 130.

Benefit of 7 *W.* 3.

And that all Perſons hereafter indicted for any Thing made Treaſon, by this Act ſhall be entitled to the Benefit of 7 *W.* 3. for regulating Trials in Caſes of Treaſon, *&c.*

High-Treaſon and Miſpriſion in *England.*

By Stat. 7. *Ann.* for *improving the Union of the Kingdoms*, enacted, That after the firſt Day of *July* 1709, ſuch Crimes and Offences which are High-Treaſon or Miſpriſion of Treaſon in *England*, ſhall be deemed High-Treaſon and Miſpriſion of Treaſon in *Scotland*, and

Made the like in *Scotland.*

from thenceforth no Crimes ſhall be High-Treaſon in *Scotland* but thoſe that are ſo in *England*. *p.* 283.

That Her Majesty may issue out Commissions of Oyer and Terminer in *Scotland*, under the Great Seal of *Great Britain*, to such persons as Her Majesty shall think fit, and that three of the Lords of Justiciary be in the Commission (whereof one to be of the *Quorum*) to hear and determine such Treasons, *&c.* in such manner as in *England*. p. 284.

Commissions to determine such Treasons.

He that has Right as a Justice-General, *&c.* in any District, after his Right certified to the Lord Chancellor of *Great Britain*, shall be one of the *Quorum*. *p.* 284.

Right of a Justice-General saved.

The Justice-Court, and other Courts, having Power to judge in Cases of High-Treason, *&c.* in *Scotland*, shall have full Power to inquire by the Oaths of 12 or more good and lawful Men of the County, *&c.* where the Courts shall sit, of all High-Treasons, *&c.* committed in the said Counties, *&c.* and to proceed and determine the said offences in such manner as the Court of *Queen's Bench*, or Justices of *Oyer* and *Terminer* may by the Laws of *England*; and if any Persons be indicted of High-Treason, *&c.* before any Justices of *Oyer* and *Terminer*, or in the Circuit Courts, *&c.* upon Request of the Queen's Advocate to the Lord Chancellor of *Great Britain*, he shall award *Certiorari* under the Great Seal, directed to the Justices of *Oyer* and *Terminer*, or Justices of the Circuit Courts, *&c.* commanding them to certify such Indictment into the Justice Court, which Court shall proceed upon the same as the Court of *Queen's-Bench* in *England* may do upon Indictments removed into that Court. And all Persons convicted

The Power of the Justice-Court in *Scotland* to inquire of Treasons, *&c.*

Removal of Indictments into the Justice-Court.

Like Forfeitures, *&c.* as in *England* for High-Treason.

convicted after 1 *July* 1709, ſhall be liable to the ſame Corruption of Blood, Pains *&c.* as Perſons convicted of High-Treaſon in *England*.

Treaſons upon the Sea, *&c.* to be determined by the Juſtice-Court.

That all Treaſons committed after the Firſt of July, 1709. by any Native of *Scotland*, upon the Sea, or out of this Realm, ſhall be heard and determined before the ſaid Juſtice-Court, or ſuch Commiſſioners of *Oyer* and *Terminer*, and in ſuch Shire, *&c.* as ſhall be aſſigned by the Queen's Commiſſion, and by good and lawful Men of ſuch Shire, as if committed in the ſame Shire; and no Perſon accuſed of any capital Offence, *&c.* in *Scotland*, ſhall be liable to any Torture but not to take away that Judgment given in *England* againſt Perſons indicted of Felony, who refuſe to plead. *p.* 285.

The Validity of Jurymen upon ſuch Trials.

Any Perſon may be return'd a Jury-man in ſuch Trials, who ſhall be ſeized of an Eſtate of Inheritance, or for Life, *&c.* in the County or Place where ſuch Trial ſhall be, or from whence the Jury is to come of the yearly Value of 40 *s.* and for want thereof, or for any other lawful Cauſe may be challenged.

Some former Treaſons in *Scotland* to be deemed only Capital Offences.

Theft in landed Men, Murder under Truſt, wilful Fire-raiſing, firing Coalheughs, and Aſſaſſination, which by particular Acts in *Scotland* were Treaſon, ſhall after the aforeſaid Time be only deemed Capital Offences and the Committers only liable to ſuch Puniſhments as by the Laws of *Scotland* are inflicted on Capital Crimes in *Scotland*, and ſhall be tried as Capital Crimes are by the Laws of *Scotland*. *p.* 286.

How to be tried.

An

Slaying Officers ſitting in Juſtice.

Any Perſon ſlaying any of the Lords of ſſion, Lords of Juſticiary ſitting in Judgent after 1 *July*, in *Scotland*, ſhall be guilty High-Treaſon.

After Deceaſe of pretended Prince of *Wales*, &c.

After the Deceaſe of the pretended Prince *Wales*, and at the End of three Years after immediate Succeſſion to the Crown, upthe Demiſe of Her Majeſty, ſhall take fect as the ſame ſtands limited by Act 1 *W. M.* for *declaring the Rights and Liberties the Subject*, *&c.* and by one other Act, *W.* 3. *For the further Limitation of the wn*, *&c.*

How Treaſons ſhall extend to Rights and Titles, *&c.*

No Attainder for Treaſon ſhall tend to the diſinheriting of any Heir, r prejudice the Right or Title of any oer than the Offender, during his Life, and ery Perſon to whom the Right of any nds, *&c.* after the Death of any ſuch Ofnder might appertain, if no ſuch Attainr had been, may enter into the ſame.

When a Liſt of the Witneſſes and Jury, *&c.* ſhall be delivered upon Indictments for High-Treaſon.

And after the Deceaſe of the pretended ince of *Wales*, and at the End of three ears after the Succeſſion to the Crown, on the Demiſe of Her Majeſty, ſhall take fect as the ſame ſtands limited by the Acts fore recited. When any Perſon is indictfor High-Treaſon, *&c.* a Liſt of the itneſſes and of the Jury, mentioning their mes, Profeſſion, and Place of Abode, ſhall given at the ſame Time the Copy of Indment is delivered to the Party indicted, hich ſhall be 10 Days before the Trial, and Preſence of two Witneſſes. *p.* 287.

To sum up the Whole of this Head Treason, *it is most proper to l over the several Statutes, and Parts Statutes now in Force, relating to* Hig Treason *and* Misprision *of* Hig Treason, *lately published for the sa Purpose, which do plainly appear un the several Alphabetical Heads Distinctions following*, viz.

Admiral.

HOW Treason at Sea is to be tried *Quorum* of four on a Commission to Admiral, *&c.* according to Stat. 28 *H cap.* 15.

Assassinators.

That Persons designing or attempting a Assassination of the King, by Poison or therwise, may be prosecuted at any Ti upon the Stat. 7 *Guielmi* 3 *cap.* 13. notwi standing a Limitation of Time in the Act, for the prosecuting of Persons for ther Treasons committed, as in the said mentioned.

Attain

Attainder.

When the Attainder of Treaſon at Common Law ſhall be of as good Force and Effect, as if it had been done by Authority of Parliament. 23 *Hen.* 8. *cap.* 20.

By 5 & 6 *Ed.*6. *cap.* 11. None to be attainted of Treaſon, but upon the Teſtimony of two lawful Accuſers in the Preſence of the Offender.

Proviſo, That the Wife loſe her Dower, where the Husband is attainted according to this Act.

13 & 14 *Gulielmi* 3. *cap.* 3. An Act for the Attainder of the Pretended Prince of *Wales* of High-Treaſon.

By 7 *Annæ*, *cap.* 21. After the Pretender's Death, and three Years after the Succeſſion to the Crown, after the Queen's Demiſe, ſhall take Effect, as limited, *&c.* No Attainder for Treaſon ſhall prejudice the Right of any other than the Offender or Offenders, during his or her, or their natural Lives only.

Coins.

Counterfeiting of Foreign Coins current in this Realm, is Treaſon by 25 *Edw.* 3. *Stat.* 5. *cap.* 2. 1 *Mariæ Seſſ.* 2. *cap.* 6. 1 & 2 *Phil.* & *Mariæ*, *cap.* 11. Trials concerning Coin current in this Realm, to be at the Common Law. 1 & 2 *Phil.* & *Mariæ*, *cap.* 10, & 11. Trials.

By

By 5 *Eliz. cap.* 11. To file, clip, wash, or round any Coin of this Realm, or that by Proclamation is current, is Treason.

They who have Forfeitures of Lands or Goods in this Case, shall enjoy them.

That these Offences make no Corruption of Blood.

By 14 *Eliz. cap.* 3. It is Misprision to counterfeit any Kind of Gold or Silver Coins, though not current in the Realm

By 18 *Eliz. cap.* 1. Diminishing or impairing the Coins of the Realm, or other current Money, is Treason.

By 7 *Gulielmi* 3. *cap.* 3. Counterfeiters of Coin are to have no Benefit of this Act, called the Treason-Act.

By 8 & 9 *Gulielmi* 3. *cap.* 25. None, except employed in the Mint, *&c.* to make or mend any Dye, *&c.* nor make any Edging-Tool, nor have in their Custody any Puncheon, *&c.* on pain of High-Treason.

Conveying out of the Mint any Instrument of Coining, without lawful Authority for that Purpose, is Treason.

So marking the Edges of counterfeit Coin, or gilding, or making round Blanks to be stampt, is Treason.

Also, any Puncheon, Dye, *&c.* found in any ones Custody, to be produced in Evidence, and then destroyed, and counterfeit Money also: Prosecution to be in three Months.

By 7 *Annæ, cap.* 25. the Act 8 *W.* 3. made perpetual, and Prosecution to be in six Months.

Correspondent

Correspondence.

9 *Gulielmi* 3. *cap.* 1. Is an Act against Corresponding with the late King *James*, or any of his Adherents; also to make it High-Treason for such Persons who, during the War with *France*, bore Arms in the Service of the *French* King, or under the Command of the late King *James*, to return into *England* without Licence, after the 14th Day of *January* 1697.

Forfeiture.

The King shall have the Forfeiture of all the Offenders Lands in Cases of High-Treason. By 25 *Edw.* 3. *Stat.* 5. *cap.* 2. 26 *Henerici* 8. *cap.* 13. 5 & 6 *Edwardi* 6. *cap.* 11. 1 & 2 *Phil.* & *Mariæ*, *cap.* 11.

The same Forfeiture for Treason in *Scotland* as in *England*. 7 *Annæ cap.* 21.

Misprision.

Concealment of High-Treason, is Misprision of Treason, by 5 & 6 *Edw.* 6. *cap.* 11. 1 & 2 *Phil.* & *Mariæ*, *cap.* 10.

So Concealment of a Bull from *Rome* for six Weeks, is Misprision, by 13 *Eliz. cap.* 2.

So to forge or counterfeit foreign Coins not current in the Realm, is Misprision, by 14 *Eliz. cap.* 3.

Aiders, Maintainers, or Concealers of Offenders against 23 *Eliz. ca.* 1. is made Misprison, which Stature is named, An Act to retain the Queens Majesties Subjects in

their due Obedience; Reciting, that since the Statute made in the 13 Year of the said Queen, Entituled, [An Act against the bringing in, and putting in Execution of Bulls, Writings, and Instruments, and other Superstitious Things from the See of *Rome*,] divers evil affected Persons have practised by other Means, *&c.* to withdraw the Queens Subjects from their natural Obedience to her Majesty, to obey the said usurped Authority of *Rome*, &c.

Oaths.

Who are obliged to take the Oath of Supremacy, as by 5 *Eliz. cap.* 1.

That Arch-Bishops may tender it to Ecclesiastical Persons.

That the Lord Chancellor, or Lord Keeper, without Warrant, may grant Commission to any to tender it.

The Refuser to incur *Præmunire*, if presented within a Year.

The Refuser to be certified into the *King's-Bench.*

Refuser the Second Time guilty of High-Treason.

How the Oath shall be expounded.

Every Parliament Man to take it.

No Temporal Baron, or above the Degree of a Baron, compelled to take it.

None but Ecclesiastical Persons, or such as neglect or deprave Divine Service, compelled to take it upon the Second Tender.

By 27 *Eliz. cap.* 2.

Persons brought up in Seminaries, to take the Oath set forth in 1 *Eliz.* 1. within 2 Days

Days after return, before the Bishop of the Diocess, or Two Justices of the County, else guilty of High-Treason.

Not to extend to a Person submitting, and taking the Oath according to the Act.

The like Provision by 3 *Jacobi* 1. *cap.* 4. intituled, [An Act for the better Discovering and Repressing the Popish Recusants.]

Such Oaths, Bonds, and Submissions to be certified into the *Chancery* within Three Months.

Old Oaths of Supremacy and Allegiance abrogated, and new Ones appointed by *Gul. & Mar. cap.* 8.

The new Oaths and Declarations, by whom, and how to be taken, and before whom.

All Persons in Office, both Ecclesiastical and Civil, to take the Oaths.

Other Persons refusing the Oaths, forfeit for First Offence 40 *s.* Second Offence Imprisonment for 6 Months, or to pay a Sum not exceeding 10 *l.* nor less than 5 *l.* and bound to good Behaviour; for Third Offence, to be incapacitated of any Office, *&c.* and to suffer as a Recusant convict.

Sea and Land Officers to take the Oaths before the Lord High Admiral, *&c.*

Oaths in 13 & 14 *Car.* 2. Intituled, [An Act for ordering the Forces in the several Counties of this Kingdom, and the former Act of the Declaration in *cap.* 4. made void, and new Oaths appointed; Names of Persons taking the Oaths to be inrolled, *&c.*

Outlawry.

When Proceſs of Outlawry awarded agai
any Traitors beyond Sea ſhall be good a
effectual. 26 *Hen.* 8. *cap.* 13. 5 & 6 *Ed.*
cap. 11.

Party Outlawed within a Year, yeildi
himſelf to the Chief Juſtice, may trave
the Indictment or Appeal, whereupon t
ſaid Outlawry ſhall be pronounced.

That in the Caſes of High-Treaſons,
7 *W.* 3. *cap.* 3. where by the Law, after O
lawry, the Party allowed may come in a
be tried, he ſhall have the Benefit of
Act.

Parliament.

New Caſes of Treaſon to be decide
Parliament. 25 *Ed.* 3. *Stat.* 5. *cap.* 2.

Every Knight, Citizen, or Burgeſ
Parliament, to take the Oath of Suprema
5 *Eliz. cap.* 1.

The Act for regulating Trials in Trea
not to extend to Impeachments, or Proce
ings of Parliament. 7 *W.* 3. *cap.* 3.

Peers.

Peers to be tryed by their Peers. 35
cap. 2. 1 & 2 *Phil.* & *Ma. cap.* 10. 1
cap. 1. 5 *Eliz. cap.* 5. 5 *Eliz. cap.* 11. 13
cap. 2. 14 *Eliz. cap.* 3. 23 *Eliz. cap.* 1. 27
cap. 2. 3 *Jac.* 1. *cap.* 4.

And before the High Steward of *Eng*
for the Time being, 1 *Phil.* & *Ma. cap.*

No Temporal Peer obliged to take the Oath of Supremacy. 5 *Eliz. cap.* 1.

Peers to take the New Oaths. 1 *W. & M. cap.* 8.

On Trial of Peers for Treaſon, all the Peers to be ſummoned 20 Days before Trial. 7 *W.* 3. *cap.* 3.

Pope.

Whoſoever ſhall maintain Foreign Authority, *&c.* forfeit their Goods, and if not worth 20 *l.* to be impriſoned a Year. 1 *Eliz.* 1.

All Spiritual Promotions of ſuch Perſons made void.

Second Offence is *Præmunire*; Third, Treaſon.

Proſecution to be within one half Year.

Maintainers of the Authority of the Biſhop or See of *Rome*, being convict within a Year, to incur *Præmunire*. 5 *Eliz. cap.* 1.

Juſtices of Aſſize or Seſſions to inquire of thoſe Offences, and certifie into the *King's-Bench* in 40 Days, *&c.*

Juſtices of the *King's-Bench* to determine, as if the Preſentment were on 16 *Ric.* 2. *ca.* 5. againſt purchaſing Bulls, or other Inſtruments from *Rome*.

It ſhall be Treaſon the Second Time to maintain the Authority of the Biſhop or See of *Rome*, or to refuſe the Oath of Supremacy. 5 *Eliz. cap.* 1. but no Corruption of Blood, *&c.*

Upon what Proof only any Perſon may be Indicted for theſe Offences.

It ſhall be Treaſon to bring in, or put in Execution, any Bulls from the Pope. See 13 *Eliz. cap.* 2.

To withdraw any from the Religion Eſtabliſhed, or to be reconciled to the Pope or See of *Rome*, is Treaſon by 23 *Eliz. cap.* 1.

Jeſuits, &c. born here, coming into the Realm, guilty of Treaſon, by 27 *Eliz. cap.* 2.

Perſons Educated in Seminaries, not returning within 6 Months next after Proclamation in that Behalf to be made in the City of *London*, and ſubmitting and taking the Oath as appointed, guilty of High-Treaſon: But not to extend to *Jeſuits* ſubmitting and taking the Oath, *&c.* and none ſubmitting to come within Ten Miles of the Queen. *Stat. eod.*

Putting in Practice to abſolve or withdraw any from Obedience, or to reconcile them to the Pope, or being withdrawn, or reconciled, either on the Sea or beyond Sea or in the Realm, is Treaſon by 3 *Jac.* 1 *cap.* 4. but ſuch as in 6 Days after return to *England* take the Oath, *&c.* not prejudiced.

Præmunire.

Second Offence in maintaining Foreign Authority is *Præmunire.* 1 *Eliz.* 1.

Proviſo for them that give Relief to Offenders, in caſe of *Præmunire* or Treaſon.

By 5 *Eliz. cap.* 1. Writing, Printing, Preaching or Teaching, Deed or Act, *&c.* in Defence of Power claimed by See of *Rome*, on Conviction within a Year.

Refuſer

Refuſer of the Oath of Supremacy to incur a *Præmunire*, if preſented within a Year. *Stat. eod.*

Scotland.

Such Crimes as are High-Treaſon or Miſpriſion in *England*, ſhall be ſo in *Scotland*, and none other. 7 *Annæ*, *cap.* 21.

Three of the Lords of Juſticiary (one *Quorum*) to be in every Commiſſion of Oyer and Terminer in *Scotland*.

Juſtice-General, or Perſon having Right of Juſticiary, to be one of the *Quorum* in ſuch Commiſſion.

Juſtice-Court, *&c.* to enquire, by the Oaths of 12 Men of the County, of all Treaſons, *&c.*

Indictments may be remov'd by *Certiorari*, from the Juſtice of Oyer and Terminer into the Juſtice-Court.

Same Corruptions of Blood, on Attainder, in *Scotland* as in *England*; but Heirs in Tail of Perſons married before 1 *July*, 1709, may inherit.

A Native of *Scotland* committing Treaſon beyond Sea, to be tried in ſuch Shire as the Queen ſhall direct.

No Perſon accuſed liable to Torture.

Jury-men to have 40 *s. per Annum.*

Theft in landed Men, Murder under Truſt, *&c.* only Capital Crimes.

To ſlay any of the Lords of Seſſions, Lords of Juſticiary ſitting in Judgment in *Scotland*, is Treaſon.

So to counterfeit the Seals in *Scotland* is Treaſon. See after.

Seals.

To counterfeit the Sign Manual, Privy-Signet, or Privy-Seal, is Treaſon, by 25 *Ed.* 3. *Stat.* 5. *cap.* 2. So by 1 *Mariæ*, *Seſſ.* 2. *cap.* 6.

Trials for counterfeiting the Seals to be at the Common-Law. 1 & 2 *Phil.* & *Mar. cap.* 10.

Counterfeiters of the Great-Seal, Privy-Seal, Sign Manual, or Signet, to have no Benefit of the Act. 7 *W.* 3. *ca.* 3.

To counterfeit the Seals appointed by Article 24 of the Union to be kept in *Scotland*, is Treaſon, by 7 *Ann. cap.* 21.

Treaſon.

See the ſeveral Particulars or Heads before. And it may be further obſerved,

That any Perſon endeavouring to deprive or hinder next Succeſſor from ſucceeding to the Crown after the Queen's Death, ſhall be guilty of Treaſon. 1 *Ann. cap.* 17.

To furniſh *France* with Arms, *&c.* during War, is Treaſon, by 3 & 4 *Annæ*, *cap.* 14.

Where returning from *France*, or bearing Arms in the *French* King's Service, and returning without Licence, *&c.* is Treaſon. So going to *France* without Licence is ſo.

By Writing or Printing, to affirm that the Queen is not lawful Queen, or that the Pretender has any Right to the Crown, is Treaſon, by 6 *Annæ*, *cap.* 7.

On Queen's Death, Privy-Council to cauſe the next Succeſſor to be proclaimed, on pain of

of High-Treaſon; and all Officers, &c. guilty. *Stat. eod.*

The Lords Juſtices not to diſſolve the Parliament, nor alter or repeal 13 *Car.* 2. (for the Uniformity of Publick Prayers, &c.) on pain of High-Treaſon. *Stat. eod.*

Trials and Witneſſes in High-Treaſon, &c.

Vide ante, Native of *Scotland* committing Treaſon, to be tried in ſuch Shire as the Queen ſhall direct; and no Perſon accuſed there of any Capital Offence, or other Crime, to be liable to Torture.

Jury-men there to have 40 *s. per Annum*, according to the Union-Act.

No Indictment or Arraignment without Two Witneſſes, or Confeſſion, according to 1 *Ed.* 6. 5 & 6 *Ed.* 6. and 1 *Eliz.* 1.

In all Trials, the Accuſers to appear perſonally, according to 5 & 6 *Ed.* 6.

That all Trials then after to be made for Treaſon, to be only according to the due Order and Courſe of the Common-Law of this Realm, by 1 & 2 *P.* & *M. cap.* 10.

All Offences againſt 1, 5, 13, & 23 *Eliz.* to be tried within a Year and a Day.

Where the Indictment is to be found within three Years after the Offence committed (except Aſſaſſinators) 7 *W.* 3. *cap.* 3.

Offences of Jeſuits, &c. coming into the Realm, to be tried in King's Bench, or where Offender is taken, according to 27 *Eliz.* & 3 *Jac.* 1.

Perſons indicted for Treaſon, to have a Copy of the Indictment five Days before Trial, and to make Defence by Council, and

Proof

Proof by Witneſſes upon Oath; and Cour on Requeſt to aſſign Council. 7 *W.* 3. *c.* 3.

The Indicted to have a Copy of the Pannel two Days before Trial, and Proceſs o the Court to compel Witneſſes to appea for him.

On Trial of Peers, all the Peers to be ſummoned twenty Days before Trial.

Two Witneſſes to the ſame Overt-Act o Treaſon. See after.

Where Outlaws coming in are to have the Benefit of the Act.

In Treaſons of divers Kinds, two Witneſſes to each Head. See after.

No Evidence to be given of any Overt-Act not expreſly laid in the Indictment.

No Indictment to be quaſh'd for Miſwriting, *&c.* unleſs Exception be made befor Evidence given; nor ſhall it ſtay Judgment

None to be tried but on Oath of two Witneſſes, either both to the ſame Overt Act, or one of them to one, and the other to another Overt-Act of the ſame Treaſon.

If two Treaſons of divers Kinds be alledged in one Indictment, one Witneſs t prove one, and another to prove another ſhall not be taken to be two Witneſſes to th ſame Treaſon.

By 1 *Annæ, cap.* 9. Witneſſes for a Priſoner, on a Trial for Treaſon or Felony, to b ſworn, and if convicted of wilful Perjury i ſuch Evidence, to ſuffer all the Puniſhments Penalties, Forfeitures, and Diſabilities, which by any of the Laws and Statutes of thi Realm are or may be inflicted upon Perſons convicted of wilful Perjury.

B

By 7 *Ann. cap.* 21. After the Pretender's Death, and three Years after the Succession to the Crown, shall take Effect as limited; then a List of Witnesses and Jury, and a Copy of the Indictment, to be deliver'd to the Indicted ten Days before Trial.

Observations upon Treason-Petit, or Petit-Treason.

Confined to Three Particulars.

This appears to be confined to Three Particulars, by *Stat.* 25 *E.* 3. *H. P. Co.* 23. as,

1. Where a Servant kills his Master or Master's Wife.

2. Where a Wife kills her Husband, or procures a Servant, *&c.* to kill him, *ibid.* Where a Son kills Father or Mother. *Id.* 24.

3. Where an Ecclesiastical Person, Secular or Regular, kills his Superiour. *Ibid.*

Aiders and Abettors, *&c.*

That Aiders and Abettors, and Procurers to Petit-Treason, are within this Act. *Ibid.* Where the Wife or Servant upon a Confederacy may be Principals, and guilty, tho' not in the same Room. *Ibid.*

Petit-Treason and Murder.

Where it may be Petit-Treason in the Servant, and the Wife an Accessary; where it may be Murder in a Stranger, and the Wife or Servant Accessary thereto; also where it may be Petit-Treason in the Wife or Servant, and Murder in a Stranger. *Id.* 25.

Manslaughter.

Where it may be only Manslaughter in the Servant, upon a sudden falling out. *Id.* 24.

Judgment.

The Judgment in Petit-Treason is for a Man to be hang'd and drawn, and for a Woman to be burnt. *Id.* 24.

What-

Rule. Whatſoever will make a Man guilty, or Principal in Murder, will make a Man guilty or Principal in Petit-Treaſon. *Id.* 24.

Trials,

Vide Jury, Treaſon, *&c.*

Trial by *Ordeal*, what *Obſelete.* TO deſire a Trial by *Ordeal* (there being no ſuch Trial now uſed) was ſaid to be an Artificial Varniſh to take with the Auditory. 5 *Jeſ. Try.* 68. This ſort of Trial were formerly of Two Sorts, one by Fire, another by Water; and ſome have ſaid it to be of Six Sorts, *viz. per Flammam, per Aquam, per Ferrum Candens, per Aquam vel Gelidam, vel Ferventem, per Sortes,* & *per Corpus Domini.* Cowel's Interp. *verb Ordeal,* where he writeth that it is utterly condemned.

Trial by Battle diſuſed. There was in former Days Trial by Battle; but this is now diſuſed, and condemned.

Things and Sayings in a former Trial. By *Scroggs, Chief Juſtice,* the Jury muſt not take Notice of any Thing that was done at a former Trial, unleſs it be ſpoken of now. 5 *Jeſ. Try.* 69. and a Priſoner muſt not call any Witneſſes to prove what was ſaid then, but to diſprove what is ſaid now. *Id.* 70.

Queſtions to the Court, *&c.* Regularly the Priſoner ſhould not ask Queſtions, but the Court, and the Priſoner propoſe the Queſtion to the Court, *Langhorn's Try.* 14.

The

The ſame Matter may be examined and tried over again by another Jury in another County, though tried the Day before, *Langh. Try.* 15. Matter examined again.

Incoherent Evidence hath been ſometimes taken favourably, and ſeeming Contradictions reconciled. *Wakeman's* Try. 15. Incoherent Evidence.

A Priſoner may be arraigned and tried at the ſame Time in Capital Crimes. *Lord Ruſſel's Try.* 29. Arraigned and tried.

The King's Councel are to have the laſt Word. *Oate's* 1 *Try.* 59. Laſt Words.

By *North Chief Juſtice*, The Priſoner muſt have Liberty to ask Queſtions while the Evi- is giving, becauſe there are ſome Queſtions that elſe may be forgotten, and the Opportunity will be loſt; but when he hath asked thoſe Queſtions, he is to make his own Obſervations upon them in private to himſelf, and afterwards it will be Time for him to argue upon it, when the King's Councel have done their Evidence: Before, it will do him little Service, and cannot be permitted. *Wakeman's Try.* 19. Vide *ante Interruption.* Queſtion by the Priſoner while Evidence giving.

Trials by the general Commiſſion of Gaol-delivery, are ſaid to be better than by a Special Commiſſion of *Oyer* and *Terminer*. *Kel. Rep.* 7. Trials by general Commiſſion left.

Several Priſoners for Treaſon tried together. *Id.* 8. Several tried together.

Their Irons to be taken off whilſt trying. *Id.* 10. Irons taken off.

Of immediate Trial upon pleading *non eadem Perſona*. Id. 13. 1 *Lev. Rep.* 61. Immediate Trial.

Of ſuch as ſtand Mute upon Trial. *Vide Tit.* Mute. Standing Mute.

Where

To be press'd, &c. Where such shall be pressed, and where proceeded with to Trial. *Id.* 36.

Peers. Of the Trials *per* Peers, *Vide Tit.* Peers, and *vide postea* Treason.

Foreign Treasons. For Trial of Foreign Treasons, and Foreign Accessaries; or Stroke in one County, and Death in another. *Vide ante* Indictment, and *Hales Pl. Cor. Tit.* Indictments, and *Tit.* Treason.

Venire facias. What Process upon Trials shall be against the Jury by *Venire facias.* H. Pl. Cor. 256.

By what Justices. When by Justices of *Oyer* and *Terminer*, and when by Justices of Gaol-delivery. *Ibid.*

Where no new Trial. No new Trial in a Criminal Case, where the Defendant is acquitted; *Aliter* upon a Conviction, and Cause shewn. 1 *Lev. Rep.* 9. 149. *Show. Rep.* 336.

By Proviso in Appeal. Where a Trial by Proviso may be for the Defendant in Appeal. *Id. Lev.* [illegible].

Tales. Where upon Trials, a Tales may be had. *Ibid. vide Tit.* Tales.

Before whom by *Nisi Prius*. Before whom these Trials may be. *H. P. C.* 258. and that a *Nisi prius* not grantable, where the King a Party, unless prayed by his Attorney; yet may give Judgment, where tried before them.

Challange. How the Challenge to the Array or Polls may be made, *ex parte Regis, et ex parte Prisonarii.* Id. 259.

Peremptory Challenge. Where a Peremptory Challenge is allowable. *Ibid.*

Challenge for Cause. Of Three Sorts of Challenge for Cause, *viz.* 1. Of Insufficiencies. 2. Unindifferency. 3. In Reference to an Alien, and *Medietat. Linguæ.* Id. 260.

The Defendant was Indicted at *Hereford*, the next *English* County, for Murder done in

a County of *Wales*, and pleaded *Auterfoits*; ry and Acquit of the ſame Murder, at the rand Seſſions of *Wales*, and ſeemed to be a ood Bar. 1 *Lev. Rep.* 118.

Auterfoits Acquit in *Wales.*

A Criminal can demand no Time to pre- re for Trial, for thoſe who will commit imes, muſt be ready to anſwer for them, d defend themſelves. *Rouſe's Try.* 63.

May not demand Time for Trial.

Upon good Cauſe ſhewn, a Verdict for e King in an Information for Perjury, has en ſet aſide, and a new Trial awarded. *Jones Rep.* 163. the *King* and *Smith.*

New Trial awarded.

A Perſon examined before the King's ouncil, or Three of them, upon any Trea- n, Miſpriſion of Treaſon; or Murder, d confeſſing the ſame, or vehemently ſuſ- cted by the ſaid Council, the King may ect his Commiſſion of *Oyer* and *Terminer* trying the ſame, into ſuch County or ce as he pleaſeth; and here no Challenge the County or Hundred ſhall be allowed. tute 33 *H.* 8. *c.* 23. *Sect.* 1. See after.

Criminal examined of Treaſon before the King's Council.

Where triable.

Where any Perſon is felonioufly Stricken, Poiſoned in one County, and dieth of ſame in another County, an Indictment Appeal may be brought in the County ere the Party dies. *Stat.* 2, 3 *E.* 6. *c.* 24. 2, 3. See after.

Stricken in one County, dieth in another.

Juſtices of Peace, and *Oyer* and *Terminer*, not make their *Venire facias* to try an e returnable the ſame Seſſions, but Juſti- of Gaol-delivery may, for their Pannel eturned by the Sheriff without any Pre- t. *Hale P. C.* 256.

Venire facias by Juſtice of Peace, &c.

See there for Trial *per Patriam*, 235. and ceſs againſt Jury. 256.

Trial, *per Patriam*, &c.

Tryal by Peers. *Vide* Peers.

Attorney

Noli proſequi entred.

Attorney General may enter a *Noli proſequi*, and ſtop Proceedings upon an Information at the Tryal, after the Jury ſworn, 1 *Vent.* 33.

Jury diſcharged after Indictment, Arraignment, and Criminals in their Trial.

The Reaſon.

Priſoners for Treaſon were Indicted, Arraigned, and in their Trial, and then the Jury diſcharged of them, becauſe but one Witneſs againſt them; and the ſame Perſons were afterwards tried again for the ſame Fact, and condemned, *Ireland's Try.* 5. This was becauſe they had not been before *Jeopardy* of their Lives (as the Court ſaid) becauſe the Charge of the Jury is not full, the Court give them their Charge at laſt after the Evidence: And the Jury are ſworn to try ſuch Priſoners *as they ſhall have in Charge*, 5 Jeſ. Try. 5. By *North Chief Juſtice*, *Bedloe* being ſworn to ſay *the Truth, the whole Truth and nothing but the Truth, in Relation to* Whitebread, *&c.* at *Ireland's* Trial, ſaid afterward That he did not then ſay all, nor half that he could have then ſaid. 5 *Jeſ. Try.* 32. He ſo ſaid in Court, I cannot prove it without bringing ſome Witneſſes that I have behind a Curtain, and I will not diſcover them until another Trial, (then intended) that ſhall not know who they are. 5 *Jeſ. Try.* This though it will not take away his Evidence, yet it goes to the leſſening the Credit of it, by *North Chief Juſtice*, 5 *Jeſ. Try.* 76. It was urged by *Whitebread*, that *Bedloe* was ſworn to ſay the Truth, and the whole *Truth*; if he did not ſay the whole Truth, he is perjured; if he did, he can ſay nothing againſt me now. 5 *Jeſ. Try.* 76. But it ſeems a Man ſhall not appear perjured by a Logical Argument or Dilemma, ſo as to take

Words ſpoken in Court by a Witneſs, to the leſſening his Credit.

Vide inf. Witneſs.

Logical Argument.

his Evidence, without producing a Record of his Conviction of Perjury. Yet this Case of *Whitebread*, and the Jury being discharged of him, being cited many Years after, was said to be a singular Precedent, and the Authority hardly allowed. *Rookwood's Trial* 44.

This discharging the Jury said to be a singular Precedent.

Trial by Statute Law.

I. *Stat.* 9 E. 3. *Stat.* 1. *cap.* 4. Whereas many be delayed in their Actions, for that the Tenants or Defendants plead in Bar a Release, Quit Claim, or other special Deed made within a Franchise, where the King's Writ runneth not; it is Enacted, That when such Deeds are shewed forth in Bar of an Action, and bear Date within a Franchise, albeit the Witnesses named in the Deed of the Franchise; yet if the Deed be denied, Process shall be awarded in the Court where the Plea depends, to cause the Country and the Witnesses to appear; and if the Witnesses come not at the great Distress returned, notwithstanding such Absence of the Witnesses, the Justices shall not let to proceed to the taking of the Enquest, as well as if such Deed did bear Date within the said County where the Plea was moved, and that the Witnesses were of the same County.

Upon Deeds pleaded made within Franchiser.

Justices to proceed, &c.

II. *Stat.* 8 *H.* 6. 29. The Statute of 28 *E.* 3. 13. (*which see in Staple*) ordering that an Enquest shall be *de Medietate Linguæ*, where an Alien is Party is confirmed; and it is by this Act further declared, that the Statute of 2 *H.* 5. 3. (*which see in* Jurors) doth only extend to Enquests taken between Denizen

Enquest *de Medietate Linguæ.*

and Denizen; ſo that an Alien may be put upon Enqueſts according to the Statute of 28 *E.* 3. albeit he have not Lands of the yearly Value of 40 *s.*

Trial of Dutcheſſes, Counteſſes, *&c.*

III. *Stat.* 20 *H.* 6. 9. Trial of Dutcheſſes, Counteſſes, and Baroneſſes, for Treaſon or Felony, ſhall be as of Noble-men, Peers of the Realm, and not otherwiſe, notwithſtanding the Statute of *Magna Charta*, *cap.* 9. which mentioneth Men only to be tried by their Peers.

Foreign Plea not Beneficial.

IV. *Stat.* 4 *H.* 8. 2. *Pars inde.* Where a Murderer or Felon (to delay his Arraignment) pleads, that he was taken out of a Priviledged Place in a Foreign County; and if it be alledged by the King's Attorny (or ſome other in the King's Behalf) that he was taken in the County where he is to be arraigned, they ſhall be tried by the Enqueſt who are to try the Murder or Felony, and before the ſame Juſtice; and if it be found that he was taken in the ſame County, ſuch Foreign Plea ſhall do him no Advantage or Benefit.

Murders and Robberies by Pirates, how tried.

V. *Stat.* 27 *H.* 8. 4. Murder and Robberies committed by Pirates upon the Sea, or in any other Place where the Admiral pretends Juriſdiction, ſhall be enquired into, tried, heard, and determined in ſuch Counties and Places within the Realm as ſhall be limitted by the King's Commiſſion, in like manner as if ſuch Offences were done at Land. And ſuch Commiſſions (being under the Great Seal) ſhall be directed to the Lord Admiral, his Lieutenant or Deputy, and to Three or Four ſuch others as the Lord Chancellor ſhall name.

By Lord Admiral, *&c.*

VI. Th

VI. The ſaid Commiſſioners, or Three of them, have Power to inquire of ſuch Offences, by Twelve lawful Men of the County ſo limitted in their Commiſſion, as if ſuch Offences were done at Land within the ſame County; and every Indictment ſo found and preſented, ſhall be good in Law; and ſuch Order, Proceſs, Judgment, and Execution, ſhall be uſed, had, done, and made thereupon, as againſt Offenders for Murder or Felony done at Land: Alſo the Trial of ſuch Offences (if they be denied) ſhall be had by Twelve Men of the County, limitted in the ſaid Commiſſion (as aforeſaid), and no Challenge ſhall be had for the Hundred. And ſuch as ſhall be convict of ſuch Offences, ſhall ſuffer Death without Benefit of Clergy, and forfeit Lands and Goods, as in caſe of Felonies and Murders done at Land.

Commiſſioners to make Inqueſts.

Jury.

Forfeiture, &c.

VII. This Act ſhall not prejudice any Perſon or Perſons, urged by Neceſſity for taking Victual, Cables, Ropes, Anchors, or Sails out of another Ship that may ſpare them, ſo as they either pay ready Money, or Money-worth for them, or give a Bill for the Payment thereof, *viz.* If they be taken on this ſide the *Straights* of *Morocco*, within four Months; but if beyond, within Twelve Months.

Exception upon Neceſſity.

VIII. When any ſuch Commiſſion ſhall be ſent to any Place within the Juriſdiction of the Cinque-Ports, it ſhall be directed to the Warden of the ſaid Ports, or his Deputy, with Three or Four ſuch other Perſons as the Lord Chancellor ſhall name: And the Inquiſition and Trial of ſuch Offences there,

How Commiſſion directed to the Cinque Ports.

there, ſhall be made and had by the Inhabitants of the ſaid Ports, and the Members of the ſame.

Treaſons, &c. tried by the Admiral, &c.

IX. *Stat.* 28 *H.* 8. 15. This Act is *verbatim* the ſame with 27 *H.* 8. 4. ſave only that it extends as well to Treaſons, and all other Capital Offences committed within the Admirals Juriſdiction, as unto Felonies, Robberies, and Murders there done. *Vide* Felony. 1 *An. ca.* 9.

Murder within the King's Court.

X. *Stat.* 33 *H.* 8. 12. The manner of the Trial, and Puniſhment of Murder and Bloodſhed within the King's Court. *See the Statute at large.*

Criminals examined upon Treaſon before the Council.

XI. *Stat.* 33 *H.* 8. 23. If any Perſon, being examined before the King's Council, or any Three of them, upon any Treaſon, Miſpriſion of Treaſon, or Murder, doth confeſs the ſame, or by the ſaid Council is vehemently ſuſpected to be guilty thereof, in this caſe the King ſhall direct a Commiſſion of *Oyer* and *Terminer* to ſuch Perſons, and into ſuch County or Place as he pleaſeth for the ſpeedy Trial, Conviction, or Deliverance of ſuch Offenders: And here no Challenge for the County or Hundred ſhall be allowed, but a Juror may be challenged if he have not Freehold worth 40 *s. per Annum*; In this Caſe alſo, Trial of a Peer ſhall be by his Peers.

No Challenge allow'd.

Stricken or Poiſon'd in one County, Death in another.

XII. *Stat.* 2, 3 *E.* 6, 4. Where any is feloniouſly Stricken, or Poiſoned in one County, and dieth of ſuch Stroke or Poiſoning in another County; an Indictment thereof found by Jurors of the County where he dies, ſhall be as good in Law, as if the Stroke

or Poiſoning had been in the County where the Party ſo dieth: And Juſtices of Gaol-delivery, and *Oyer* and *Terminer*, in the County where ſuch Indictment is taken, as alſo the Juſtices of the King's Bench, before whom ſuch Indictment is removed, may proceed thereupon in all Points, as if ſuch Stroke or Poiſoning, and Death, had all happened in one and the ſame County.

Appeal thereof, where againſt Principal and Acceſſary.

XIII. Alſo an Appeal may be commenced, taken, and ſued in the County where the Party ſo Stricken or Poiſoned ſhall die, as well againſt the Principal as Acceſſary, in whatſoever County ſuch Acceſſary be guilty thereof; and the Juſtices before whom ſuch Appeal is proſecuted (within the Year and Day after Offence committed) ſhall proceed againſt every ſuch Acceſſary in the County where ſuch Appeal is ſo taken, in like manner as if the Offence of ſuch Acceſſary had been committed in the ſame County, as well concerning Trial by Jurors, upon the Offenders Plea of Not guilty, as otherwiſe.

Indictments found, *&c.* againſt Acceſſaries.

XIV. Where any Murder or Felony is committed in one County, and more Perſons be Acceſſary thereunto in another County, an Indictment found and taken againſt ſuch Acceſſary before Juſtices of Peace, or other Commiſſioners in the County where ſuch Perſon is Acceſſary, ſhall be as good in Law, as if the Principal Offence had been committed in the ſame County.

Certificate concerning the Principal, in order to try the Acceſſary.

XV. The Juſtices of Gaol-delivery, or *Oyer* and *Terminer*, (or Two of them) of the County where the Party ſo became Acceſſary, ſhall (upon Requeſt) write unto the *Cuſtos Rotulorum*, where the Principal ſhall

be attainted or convicted, to certifie them whether the Principal ſhall be attainted, convicted, or otherwiſe diſcharged; and then the Juſtices of Gaol-delivery, *Oyer* and *Terminer*, or others Authorized, ſhall proceed upon every ſuch Acceſſary in like manner, as if both the Principal Offence and Acceſſary had been committed in the County where the Party ſo became Acceſſary: And thereupon every ſuch Acceſſary ſhall anſwer upon his Arraignment, and receive ſuch Trial, Judgment, and Execution, and ſuffer Pains and Forfeitures, as are uſed in other Caſes of Felony.

Summons of Peers upon a Trial.

XVI. By *Stat.* 7 *W.* 3. *ca.* 3. All Peers who have Right to ſit in Parliament, ſhall be ſummoned upon Trials of any Peer or Peereſs for Treaſon, at leaſt 20 Days before ſuch Trial.

Vide Tit. Treaſon.

Trials before the Conſtable and Marſhal.

Their Conuſance.

The Conſtable and Marſhal ſhall not have Conuſance of Pleas or Suits, which ought to be diſcuſſed at the Common Law. *Stat.* 8 *R.* 2. 5.

Conuſance by the Conſtable.

By 13 *R.* 2. *Stat.* 1, 2. The Conſtable of *England* hath Cognizance of Things concerning Arms and Wars, which cannot be diſcuſſed by the Common Law; and in this Court the Plaintiff ſhall plainly declare his Matter in his Petition, before the Defendant be ſent for.

Injunction by Privy-Seal.

When a Plea is commenced before the Conſtable and Marſhal, which may be tried at the Common Law, the Party griev'd ſhall have

have a Privy-Seal to cauſe the Conſtable and Marſhal to ceaſe, until it may be decided by the King's Councel, whether it may be tried there or at the Common Law.

V.

Verdict.

Given in open Court.

THE Verdict in Cases Capital must be given openly in Court, and no privy Verdict. *Hal. Pl. Cor.* 267.

Found specially upon Indictments of Murder, *&c.*

It may be found specially; as on an Indictment of Murder, the Jury may find him guilty of Manslaughter *per Infortunium*, or *se defendendo*; but then they must find the Manner of it, that the Court may judge thereof. *Ibid.*

Verdict by Peers.

Of the Verdict by Peers. *Vide* Peer, *&c.*

Several special Verdicts in Treason.

Several special Verdicts in Cases of High-Treason. *Kel. Rep.* 72, *&c.*

Several Judgments on special Verdicts.

Where on one special Verdict against several Prisoners, several Judgments. *Id.* 77, 78, 79.

Not strictly tied to Form.

That a Verdict is not so strictly tied to Form as an Indictment. *Id.* 12, 112.

Fact found, how implied.

Where a Fact is found done, it is implied 'twas voluntarily, except specially found otherwise. *Id.* 112.

View. *Vide* Jury and Jurors.

W. *West-*

W.

Weſtminſter-Hall.

A Man bound to his good Behaviour for ſpeaking provoking Words in *Weſtminſter-Hall.* 1 *Lev. Rep.* 107.

Witchcraft. Vide *Conjuration.*

Punishment.

WItchcraft at Common Law is puniſhed with Death. *H. P. C.* 6.

Divided into two Degrees, &c.

It is divided into two Degrees by *Stat.* 1 *Jac.* 12. whereby Witchcraft in the firſt Degree is made Felony, without Benefit of Clergy, including four Species. *Ibid.* As,

Invocation, &c.

1. Invocation or Conjuration of an Evil Spirit.

Conſulting, &c.

2. To conſult, covenant with, entertain, employ, feed or reward any Evil Spirit, to any Intent, tho' no Act be done thereupon.

Taking up dead Perſons, &c.

3. To take up any dead Perſon, or any Part thereof, to be employed or uſed in Witchcraft, Charm, &c. though not actually uſed or employed, *Ibid.*

Perſons kill'd or hurt, &c.

4. To exerciſe any Witchcraft, Inchantment, Charm, or Sorcery, whereby any Perſon ſhall be kill'd, deſtroyed, conſumed, or lamed in his or her Body, or any Part thereof;

thereof; which requires the Act to be done, *viz.* laming, conſuming, *&c.*

Theſe, and Acceſſaries before, no Clergy.

That theſe, and all Acceſſaries before, to ſuffer as Felons, without Clergy; yet Acceſſaries may be after; but then they have Clergy, becauſe not ſpecially included. *Id.* 7.

Second Degree to tell where Treaſure is, *&c.*

Witchcraft in the ſecond Degree, as to take upon them by Witchcraft, Inchantment, Charm, or Sorcery, to tell where Treaſure is to be found; and they that take upon them to do it, tho' they cannot, yet are within this Law. *Ibid.*

Of Goods loſt.

Or to take upon them to tell where Goods loſt or ſtol'n are to be found; or to the Intent to provoke any Perſon to unlawful Love. *Ibid.*

Deſtroying Cattle, *&c.*

Or ſo to act, whereby Goods or Cattle ſhall be deſtroyed; which requires an actual Deſtroying, and not a bare Taking upon them. *Id.* 8.

Or ſhall intend, tho' not effected.

Or ſhall uſe Witchcraft, *&c.* to hurt any Perſon, tho' the ſame be not effected. *Ibid.*

Puniſhments.

The Puniſhment of theſe for the firſt Offence, is a Years Impriſonment, and Pillory; for the ſecond it is Felony; but then it requires an actual Conviction, and Judgment for the firſt: Alſo the ſecond Offence muſt be committed after the Judgment for the firſt. *Ibid.*

Actual Conviction for the firſt, before the ſecond takes Effect.

The like in Forgery, *&c.*

The like in Forgery, Tranſportation of Sheep, *&c.* but the Conſequents upon an Attainder, *viz.* Corruption of Blood, and Loſs of Dower, ſaved; yet during Life the Lands forfeit. *Ibid.* And here it is noted That a Saving againſt Corruption of Blood preſerves the Deſcent; and a Saving of the Land to the Heir prevents Corruption of Blood.

No Loſs of Dower, or Diſheriſon of Heir.

Witn

Witneſs and Witneſſes.

Vide Treaſon, *&c.*

TWO Witneſſes to the ſame Fact, tho' at ſeveral Times, ſufficient. *Ireland*'s *Try.* 55. Two Witneſſes.

If a Witneſs denies what he formerly diſcover'd upon Oath, he is not allowed to be perjur'd, ſo long as that Denial is not upon Oath. *Green*'s *Try.* 23. Denying what formerly confeſs'd.

In Caſes not Capital, a Witneſs for the Priſoner ſhall be ſworn. *Reading*'s *Try.* 43. But in Capital Caſes, a Witneſs againſt the King for the Priſoner, cannot be ſworn; but the Jury is to take Heed of what they ſay, and to be governed by it according to the Credibility of the Perſon. 5 *Jeſ. Try.* 45. Witneſs againſt the King not ſworn.

Roman Catholicks lawful Witneſſes, unleſs ſuch Objections can be produced to invalidate their Evidence, as would have the ſame Force againſt Proteſtants. 5 *Jeſ. Try.* 46, 64, 70. *Oates* 2 *Try.* 51, 52. It was objected againſt Mr. *Langhorn*'s Witneſſes, that they were Papiſts, and ſpake in a general Cauſe; to which he replied, That if they were not to be believed becauſe Papiſts and Friends, then the other, or the contrary, are not to be believed becauſe they are Enemies. *Langh. Try.* 58. *Oates* cited *Bulſtrode*'s *Rep.* 2 *Part.* 155. as my Lord *Coke*'s Practice, that a Popiſh Recuſant is not to be admitted a Witneſs between Party and Party. Over-ruled, as againſt Law. *Oates* 1 *Try.* 73. *Roman Catholicks* lawful Witneſſes. Papiſts Witneſſes. Popiſh Recuſant a Witneſs.

If

Charged with the ſame Crime not Witneſs for Party.

If a Man ſtands charged with the ſame Crime with the Priſoner, tho' he be not convicted, his Evidence on Behalf of the Priſoner is of little Weight. 5 *Jeſ. Try.* 73. See after.

Hath ſtood in the Pillory.

A Man that hath ſtood in the Pillory is counted an infamous Perſon, and cannot be taken for a Witneſs. By *North Chief Juſtice Langhorn's Try.* 28.

Attaint of Conſpiracy, *&c.*

One attaint of Conſpiracy, Forgery, or Perjury, or duly ſet in the Pillory, not allowed to be a Witneſs. *Hale P. C.* 263. One convict of Perjury can never be a Witneſs, tho' he hath a Pardon. *Siderf.* 52. A Party outlawed (*of Felony*) is no *Legalis Teſtis. Trin.* 32 *Car.* 2. *B. R.* in *Cellier's Caſe. Sed. vid. Co. Lit. f.* 6. *b.*

Convict of Perjury, *Præmunire, Stigmaticus, &c.* no good Evidence.

One convict of Perjury, *Præmunire*, Forgery, *Stigmaticus*, pillorized, or other infamous Perſon, an Infidel, *Non Compos*, or a Party intereſſed; and regularly all ſuch as loſe their *Liberam Legem*, are not ſufficient Witneſſes. *Co. Lit. f.* 6. *b.*

Was formerly burnt in the Hand, a good Witneſs.

Vide Kel. Rep. 37. Where a Priſoner took Exception againſt a Witneſs becauſe he had been formerly burnt in the Hand for Felony; but the Chief Juſtice and others held that to be no Exception; and that in Civil Cauſes ſuch Perſons are frequently admitted for Witneſſes; and that it differs from cutting off Ears, ſtanding in the Pillory, or other Stigmatizing; becauſe thoſe Puniſhments make the Perſon infamous; but Burning in the Hand cometh in the Place of Purgation at the Common Law, *&c.*

Difference from Stigmatizing, *&c.*

Aliter, if attainted and pardoned.

But, *ibid.* in Margin. One attainted of Felony, and pardoned, is no good Witneſs

an

nd a *modus Decimandi*, ſo proved, diſallowed. *Vid.* 2 *Bul.* 155.

He who has Clergy is totally diſcharged, *ver Stat.* 18 *Eliz.* 17. *Kel. Rep.* 38. in Margin. — Clergy is a total Diſcharge.

An Informer ſhall be a good Witneſs to convict a Man for Deer-ſtealing; tho' he has a Moiety of the Forfeiture. 3 *Mod Rep.* 114, 115. — Informer a good Witneſs.

In an Information in the Crown-Office for a Riot, two of the Defendants (no Witneſſes appearing againſt them) were allowed and ſworn as Witneſſes in Behalf of the other Defendant. *Siderf.* 237. the King and *Bedder.* — Defendants upon a Riot allowed.

A Man retained of Council for the Priſoner, or his Attorney or Solicitor, may not be examined againſt him, for he is obliged to keep his Secrets. 1 *Ventris* 197. *Cuts* and *Pickering.* — *Aliter* of Council, *&c.* againſt Client.

It is a Maxim in Law, That Witneſſes cannot teſtifie in the Negative, but in the Affirmative only. *Co.* 2 *Inſt.* 662. — Maxim.

A Matter may be ſworn falſe, and yet the Witneſs is not guilty of Perjury till he be indicted, and another Jury paſs upon him; for it is one Thing to be forſworn and perjured, and another Thing to be proved ſo; and he is not to be proved ſo, but by a Record for that purpoſe. By *Scrogg's Chief Juſtice.* 5 *Jeſ. Try.* 70. — It's one thing to be perjured, and another Thing to be proved ſo.

Lord Chief Juſtice *Jeffreys* would not admit a Witneſs to ſwear that he was forſworn at a former Trial: For he that has once forſworn himſelf, ought not to be a Witneſs after that in any Caſe whatſoever. *Oates* 1 *Try.* 68. — Not to ſwear he was formerly forſworn.

A Man is not compellable to be a Witneſs, unleſs he be ſubpœna'd (and tendered Charges. *Vide Stat.* 5 *Eliz. c.* 9. *Sect.* 12.) but — Not compellable, unleſs ſubpœna'd, *&c.*

but if a Man will come without a Subpœna, and give Evidence in a Cauſe, this is no Objection to his Teſtimony. *Oates* 1 *Try.* 14.

Some of the Perſons equally culpable, may be Witneſſes againſt the Priſoner.

Vide Kel. Rep. 17. Where it was reſolved, That ſome of the Perſons who are equally culpable with the reſt, may be made uſe of as Witneſſes againſt their Fellows, and they are lawful Accuſers, or lawful Witneſſes within the Stat. 1 *Ed.* 6. 12. 5 & 6 *Ed.* 6. *cap.* 11. & 1 *Mar.* 1. And that the Law alloweth every one to be a Witneſs who is not convicted or made infamous for ſome Crime; and if it were not ſo, all Treaſons would be ſafe. So *Id. fo.* 33. where one was indicted for coining of Money, and another who had been Party with him in the Crime, and had obtain'd the King's Pardon, was uſed as a Witneſs againſt him, together with other Witneſſes.

One pardoned for the ſame Crime, a Witneſs.

Aliter upon a Promiſe of Pardon to give Evidence.

But *idem* 18. the Chief Baron held, That if one of the culpable Perſons in Treaſon be promiſed his Pardon, on Condition to give Evidence againſt the reſt, that diſableth him to be a Witneſs againſt the others, becauſe he is bribed, by ſaving his Life to be Witneſs, and took a Difference where the Promiſe of Pardon is to him for diſcloſing the Treaſon, and where it is for giving of Evidence.

The ſame to the Trial as to the Indictment.

Alſo there agreed, That if the Law for two Witneſſes were in force, yet the ſame two Witneſſes who are to the Indictment, may be alſo the Witneſſes at the Trial.

Upon a Woman's taken by Force.

Where a Woman taken away by force, upon an Indictment for that Offence, is allowed to be a Witneſs of the Fact. 4 *Mod. Rep.* 8.

Where

Where the Repair of an High-way is in Queſtion, none ſhall be admitted to be an Evidence who lives in that Pariſh where the Way is. *Id.* 49. — Concerning an High-way.

In an Action upon the Stat. of Hue and Cry, ſome of the Inhabitants of the Hundred appearing as Witneſſes, ſaid they were poor; and paid no Taxes, or Pariſh-Duties, and not allowed as good Witneſſes, tho' Alms-People and Servants are; the Reaſon was, That when the Money recovered came to be levied, they might be worth ſomething. 1 *Mod. Rep.* 3. 74. — Upon Statute of Hue and Cry. — Alms People, *&c.*

Concerning the Reading the Depoſitions of Witneſſes dead or unable to travel. *Vide Tit.* Depoſitions. — Depoſitions.

So if detained by Procurement of the Priſoner. *Ibid.* — Witneſs detained.

Concerning Subornation of Witneſſes to Perjury, *&c.* *Vide* Indictment. It ought to ſet forth, that the Oath was made, that it might appear that the Thing ſworn was falſe. 3 *Mod. Rep.* 122. — Witneſſes ſuborn'd.

It is a very unjuſtifiable and indeed a very horrid Thing, and ſeverely to be puniſh'd, for Witneſſes that come on behalf of the Priſoner, to be hindred of free Ingreſs and Regreſs, or moleſted or abuſed. By *North* Ch. *Juſt.* and *Atkins Juſt.* *Langhorn*'s *Try.* 45. — Ill Practice to hinder Witneſſes free Ingreſs, *&c.*

Langhorn deſired that he might examine ſome of his Witneſſes after the King's Council had done, but he was told he might then ſay what he would for his Defence, but not examine any new Witneſſes. *Langhorn*'s Try. 47. — Not to be examined *pro* Defendant after the King's Council.

Witneſſes

Witneſſes to give an Account of a Witneſs.

Witneſſes may be examined to give an Account of the general Tenour of the Converſation of a Witneſs againſt a Priſoner, but not of particular Crimes. *Rookwood's* Trial 64, 65.

Two Witneſſes, one to one particular Fact of Treaſon, and one to another, have been held ſufficient in Law, for they are both Overt-Acts of the Treaſon. Sir *Henry Vane's* Caſe, and *Gauen's* Caſe 5 *Jeſ.* Try. 87, 88. So if the Overt-Acts were in two ſeveral Counties, *Colledge's* Trial 12. The two Witneſſes that the Statute (5, 6 *E.* 6. *cap.* 10. *Sect.* 8.) requires in Treaſon, are not to the ſame individual Act, but to the ſame Treaſon; for if there be ſeveral Acts declaring the ſame Treaſon, and one Witneſs to each Act, it is ſufficient. *Sidney's* Trial 47, 56. Lord *Ruſſel's* Trial 50, 59. And this was the Lord *Stafford's* Caſe. *Vide* Overt-Act.

Two Witneſſes, one to one Fact, and another to a ſecond.

If in caſe of Treaſon, there be but one Witneſs to prove a direct Treaſon, and another Witneſs to a Circumſtance that contributes to that Treaſon, that will make two Witneſſes. Reſolved by all the Judges of *England*, *Sidney's* Trial, 59. *Vide* Treaſon.

One direct, another to a Circumſtance.

But now by the Stat. 7 *W.* 3. *c.* 3. Witneſſes for the Priſoner ſhall be upon Oath in Caſes of Treaſon, whereby Corruption of Blood may be made, or of Miſpriſion of ſuch Treaſon; and no Perſon ſhall be attainted in ſuch Caſes, but by the Oath and Teſtimony of two lawful Witneſſes, either both to the ſame Over-Act, or one to one, and the other to another Overt-Act of the ſame Treaſon, unleſs the Party will

Now Priſoners Witneſſes to be upon Oath, two in Treaſon, either to both the ſame Overt-Act, or elſe one to one, *&c.*

lingly

lingly confeſs in open Court, ſtand mute, or challenge above 35 peremptorily, or be attainted by Outlawry; yet if the Party outlawed comes in, and is tried, he ſhall have the Benefit of this Law: And where two or more diſtinct Treaſons of divers Kinds ſhall be alledged in one Bill of Indictment, one Witneſs to one, and another Witneſs to another Treaſon, ſhall not be deemed two Witneſſes within the Meaning of this Act; and the Priſoner ſhall have like Proceſs to compel their Witneſſes to appear for them, as is uſually granted for Witneſſes againſt them.

Aliter, if two diſtinct Treaſons in one Indictment.

Vide Bail, Baron, Copy, Evidence Overt-Act, *Particeps Criminis*, Treaſon, Trial, *&c.*

Where the Commiſſioners for Trial of the Priſoners came off from the Bench, and gave Evidence, and did not go up to the Bench again during that Man's Trial, and agreed by the Court they were good Witneſſes, and might be made uſe of. *Kel. Rep.* 12.

Commiſſioners for the Trial allowed to be good Witneſſes.

Id. 18. Where it's ſaid, one Witneſs in Treaſon is enough at the Common Law, and ſeveral Judges were of Opinion, that thoſe Words of two Witneſſes in Caſe of High-Treaſon, were repealed by Stat. 1 & 2 *P. & M. cap.* 10.

Formerly held one Witneſs in Treaſon, was ſufficient.

Alſo by Stat. *primo Annæ Reg.* Witneſſes for Priſoners upon Trials for Treaſon or Felony, ſhall be ſworn as Witneſſes for the Queen, and are ſubject to the like Puniſhment for Perjury.

Witneſſes *pro* Defendant, to be ſworn in Treaſon, *&c.*

Wives.

Two Wives, and one divorced.

THAT having two Wives, one whereof is divorced *causa Adulterij* or *Sevitiæ*, not within the Statute of 1 *Jac.* 11. See *Kelyng's Rep.* 27.

A Man marries a Wife in *France*, and after another in *England*.

If a Man marrieth two Wives, one in *France* and another in *England*; it seems that if his first Marriage was in *France*, and the second Marriage which maketh the Felony was in *England*, that he may be indicted and tried here for it: And the Jury may, on Evidence, find his first Marriage in *France*, being a meer transitory Act, and having nothing of Felony in it, and that our Juries usually find such transitory Acts, tho' they are done in a foreign Nation. But if the first Marriage was in *England*, and the second in *France*, then it seems he cannot be tried for it here, because the Act which made the Felony, was done in another Kingdom, and that Felonies done in another Kingdom are not by the Common Law triable here in *England*. *Vide Kel. Rep.* 79, 80.

The foreign transitory Act may be tried here.

Aliter if he marries the first in *England*, and the second in *France*.

Na.

'Tis said, That Conviction for having two Wives, shall be given in Evidence to prove the Unlawfulness of a Marriage. 3 *Mod. Rep* 164.

Conviction given in Evidence.

That a Wife cannot commit Larceny or Felony jointly with her Husband; *contra* of Murder. *Kel. Rep.* 31.

Felony, *&c.* not jointly by Wife and Husband.

A

A Woman in the ſame Felony with the Man, pretends to be his Wife; the Way of Indictment in that Caſe. *Id.* 37.

Aliter of a pretended Wife.

Concerning a Man's being taken in Adultery with another Man's Wife, it ſeems that if the Husband ſhall ſtab the Adulterer, or knock out his Brains, this is but bare Manſlaughter; for Jealouſy is the Rage of a Man, and Adultery is the higheſt Invaſion of Property. 1 *Vent.* 158. *Raymond* 213. *Kel. Rep.* 137.

Husband kills a Man taken in Adultery.

Bare Manſlaughter.

Rex verſ. Dominum Lee.

The Lady *Lee* was brought into the Court of *B. R.* and upon Affidavits of her bad Uſage, Impriſonment, Danger of her Life from her Husband, and ſhe alſo in Court making Oath that ſhe went in Danger of her Life by him; and notwithſtanding divers Affidavits were made in Court to the contrary, and of his good Uſage, the Court intended to bind him with Sureties, according to *F. N. B.* 80, & 239. But they declared, that they could not do more than to find him, not to remove her from him. *Lev. Rep.* 128.

Wife in Danger of her Life from Husband. He bound with Sureties.

An Heireſs brought into Court by *Habeas Corpus*, and being asked, Whether ſhe would ſtay with Sir *Robert Viner*, her Father-in-law, and not to go to her Aunt and Guardian by Law, nor to one *E.*'s, her pretended Husband; choſe to ſtay with Sir. *V.* And therefore the Court would not remove her; Sir. *R.* entring into Recognizance of 40000 *l.* not to permit her to be

An Heireſs left with her Father-in-Law from her Aunt and pretended Husband.

Security given.

married ſo long as ſhe ſhould be in hi
Hand, and it was ruled, That he ſhoul
permit her Aunt and Friends to viſit he
ſo long as ſhe ſhould be in his Cuſtody
2 *Lev. Rep.* 128, 129.

Friends might viſit her, *&c.*

A Maid above 12, and under 16, take
from her Parents and married, forfeits he
Eſtate to the next in Remainder, durin
her Life. 3 *Mod. Rep.* 84.

One taken and married, forfeits Eſtate.

There muſt be Proof of ſtealing an Hei
eſs, either by Slight or Force, to bring th
Perſon within the Stat. of *Phil. & Mar.*
169. And there muſt be a continued Diſſe
of the Parent or Guardian, for if ſhe on
agree, 'tis an Aſſent within the Statute, th
ſhe or they diſagree afterwards. *Ibid.*
4 *Mod. Rep.* 8. A Woman taken away
Force, allowed to be a Witneſs of the Fa

Proof of ſtealing an Heireſs.

And Diſaſſent of the Parent.

That after the Death of one of the Parti
married, there ought not to be any Suit
the Spiritual Court to make the Marria
void. 4 *Mod. Rep.* 182.

No avoiding the Marriage by Suit after Death.

That Party may be puniſhed afterwar
for Inceſt, but the Children ſhall not be ma
Baſtards. *Ibid.*

Party may be puniſhed for Inceſt, *&c.*

Wo

Words.

Vide Overt-Act, Pardon, Treaſon, *&c.*

WORDS are no Provocation to kill a Man, nor will they leſſen a Crime from Murder to Manſlaughter. *Kel. Rep.* 55, 65. Words no Provocation to kill.

And if two quarrel in Words, and after a reaſonable Time fight, and one is kill'd, 'tis Murder. See Tit. *Murder, &c.* Fighting after Words, Murder.

Writing.

Vide Overt-Act, Proof, Treaſon, *&c.*

Directions to many Precedents of Indictments, Informations and Inquiſitions, to which this Treatiſe hath Relation, and which are not inſerted in the Body of the Book.

PRECEDENTS, *&c.* upon ſeveral Actions and Statutes before-mentioned: See upon Appeals in the Book, 50, 51, *&c.* in Attainder, 63; in Attaint of Jurors, 76, 77.

Robbery. Upon the Statutes of Hue and Cry for Robbery.

For Goods loſt within a Pariſh. *Raſt. Ent.* 406. *Coke's* Entries, 351. *Vidian* 210. *Hanſ.* 3.

Upon the Statute of *Wincheſter* before the Stat. 27 *Eliz.* wherein the Inhabitants are particularly named. *Coke's Entr.* 350. 1 *Brown's Ent.* 99. *Bro. Rediviv.* 455. 2 *Brown* 178. *Levins Ent.* 21.

Againſt 2 Hundreds for Robbery in the divers 2 Hundreds. *Co. Ent.* 348. 1 *Brown* 111. *Bro. Red.* 455. *Robinſon's Ent.* 329, 330.

For a Maſter, concerning Money taken from his Servant. *Raſt. Ent.* 407. *Co. Ent.* 349. 1 *Brown* 110. *Rob. Ent.* 328.

The Oath of Robbery before a Juſtice. 12 *Co.* 62. 1 *Brown* 99. *Rob. Entr.* 328. *Vidian* 212 *Hanſ.* 3. 2 *Saund. Rep.* 375.

Narr. upon the Statute of *Winton*, & 27 *Eliz.* of Money loſt, and divers Goods and Chattels

Chattels taken away, and Demurrer thereupon. 2 *Saund.* 374.

Upon the Statute of Hue and Cry, where the Plaintiff knew one of the Malefactors. *Clifts Ent.* 378.

Upon the Stat. 4 & 5 *W. & M.* for the Encouragement and apprehending of Highwaymen. *Clift.* 120, 375, 377.

Pleas thereupon.

Not guilty with a Challenge of the Hundred. *Raſt. Ent.* 46, 47. *Co. Ent.* 348, 349. *Rob. Ent.* 329, 331. *Vidian* 211, *Hanſ.* 4.

Bar, that no Hue and Cry was made. *Co. Ent.* 350. 1 *Brown's Ent.* 100.

Non Inform. *Co. Ent.* 351. *Clift* 375.

To an Action againſt 2 Hundreds. *Non Cul.* and a *Venire* awarded to the next Hundred. 1 *Brown* 111.

Judgment for the Plaintiff upon a Verdict. *Co. Entr.* 348, 350, 351. *Rob. Ent.* 330.

Judgment for the Plaintiff upon a Demurrer, and the Plaintiff remits Dammages *occaſione captionis Bonorum*, and a Writ of Inquiry awarded and return'd thereupon. 2 *Saund.* 378.

Non proſ. in Hue and Cry. 2 *Townſ. Judgments*, 6.

Judgment for the Plaintiff upon a general Verdict for Part, where there was a ſpecial Judgment for other Part. *Id.* 5.

Judgment for the Plaintiff upon a ſpecial Verdict, concerning the Validity of the Oath. *Id.* 6.

Numeri Rotulor de ſeperal. actionibus ſuper Stat. de Hue and Cry. 1 *Brown's Ent.* 112.

Forcible Entry.

Concerning the Statutes againſt Forcible Entry. See in the Book, *pag.* 185, and 186.

Upon the Stat. 5 *Ri.* 2. 1 *Brown's Ent.* 98.

Upon the Statute 8 *H.* 6. *Id.* 97.

Non ingreſſus eſt Terras contra formam Statut. Hanſ. 107.

Judgment *pro quer.* upon a Verdict. 2 *Townſ. Jud.* 9.

Simile ſine Miſ. Ibid.

Simile ſuper Inquiſition. *Ibid.*

Upon the Statute againſt Malefactors in Parks. *Raſtal's Ent.* 650, 651, 652. *Hern.* 215.

Of Forgery and *Perjury.*

See in the Book 191, 197.

Of Maintenance, Champarty, and *Imbracery.*

See many Precedents thereof in *Raſtal's Entries,* 119, 120, 427, 428, 429, *&c.* 2 *Brown* 30. upon Stat. 32 *Hen.* 8. *Vide* 1 *Brown's Ent.* 96. & *Robinſon's Ent* 333, 420. with their Bars and Judgments. *Et vide* 2 *Townſ. Jud.* 10. Imbracery, *Placita General* 89.

Againſt Officers for Extortion.

Againſt an Under-Sheriff for a Return of an *Elegit. Raſt. Ent.* 337.

Againſt a Gaoler for taking 8 *l.* of one committed

committed upon Suſpicion of Felony. *Raſt. Ent.* 337. *Vide Robinſon's Ent.* 443.

Of Rape.

De Raptu Ancille. Raſt. Ent. 542.

Of Subornation.

Count thereupon, upon the Statute. 5 *Eliz. cap.* 9. of Subornation of Witneſſes. *Bro. Rediviv.* 470.

Of Uſury.

Vide Clift. 128 *Vidian* 192, 214. *Bro. Rediv.* 478.

See for Actions upon many other Statutes (not ſo proper for our preſent Purpoſe), *Townſ.* Tables and *Cornwall's* Tables, Tit. *Action ſur le Statute.*

Several other Precedents.

Challenge.

For Challenge upon Iſſue join'd, and to the Array, &c. *Vide Raſt. Ent. Co. Ent. & Townſ.* Tables, *Tit.* Challenge, *Cornwal's* Tables; *Tit. eund.*

Commitment.

Of a Jury-man, who after his receding from the Bar to ſpeak upon the Verdict, took a Veſtment from a Servant, which he put on againſt the Keeper's Will, and ar-

wards made Fine and was discharged. *Rast. Ent.* 266. & *vide Townſ.* Tables, & *Cornwal's* Tables, *Tit. eund.*

For Conſpiracy.

For Declarations, Bars, Pleadings, and Judgments thereupon. See the Regiſter, *Raſt. Ent. Coke's Ent. Stamford's* Pleas of the Crown, & *Townſ.* Tables, *Tit.* Conſpiracy, & *Cornwal's* Tables, *Tit. eund.*

Indictments.

For Indictments of Rebellion. *Raſt. Ent.* 413, 643. *Co. Ent.* 361, 693. *Weſt's* Precedents. 177, 178. See 2 *Vent. Rep.* 315. for compaſſing to depoſe and kill the King and Queen, and to levy War and Rebellion againſt them.

For practiſing the Death and depoſing the King, and abuſing his Picture, &c. *Weſt. Preſ.* 365.

For Writing and Publiſhing Scandals of the King. *Weſt.* 198, 200, 256, 364.

Againſt the Speaker and Concealer of ſcandalous Words concerning the King. *Weſt.* 309.

For moving to Rebellion, and impriſoning a Privy-Counſellor. *Weſt.* 254.

For conſpiring the Death of a Privy-Counſellor. *Co. Ent.* 173, 482.

For counterfeiting the Privy-Seal, *Co. Ent.* 360.

For counterfeiting Letters Patents. *Weſt.* 118, 263.

For counterfeiting Money: *Weſt.* 142, 143, &c. *Co. Ent.* 360.

For

For clipping and filing Money, *West.* 258.

For uttering falſe Money coined in *France*. *Weſt.* 316.

For Miſpriſion of Treaſon, and receiving and concealing a Coiner of falſe Money. *Dyer* 269.

Againſt a Woman for poiſoning her Husband, *Weſt.* 166.

For Murder by poiſoning. *Weſt.* 163, 165. *Co. Ent.* 25. 4 *Co.* 44. 2 *Inſt.* 634. *Plowd.* 473.

Againſt a Servant for murdering his Miſtreſs. *Weſt.* 151. *Simile* for murdering his Maſter. *Id.* 153, 154.

For murdering with Arrows, Darts, Weapons, *&c. Raſt. Ent.* 384, 455. *Weſt.* 70, 239, 300, *&c. Co. Ent.* 354, 355.

The like upon a Challenge. *Co. Ent.* 356.

For murdering an Officer upon an Arreſt by him made. 9 *Co.* 62. *Weſt.* 354.

For Murder againſt the Principal and Acceſſary. *Weſt.* 146, 150, 301, 308, *&c. Raſt. Ent.* 263, 264. 4 *Co.* 40, 41.

For murdering Infants. *Weſt.* 152, 277. *Raſt. Ent.* 264. *Dyer* 186.

For Homicide. *Weſt.* 138, 139, 230. *Co. Ent.* 53.

Simile per Infortunium. Co. Ent. 353.

Simile ſe Defendendo. Co. Ent. 354.

For Witchcraft upon a Man by which he died. *Weſt.* 221. *Co. Ent.* 109. The like upon an Horſe. *Weſt.* 223.

For Sodomy with a Boy. *Weſt.* 80, *Co. Ent.* 351.

For raviſhing a Wife. 38 *Aſſ.* 19.

The like of a Girl. *Weſt.* 173, 174, 175. *Co. Ent.* 358. *Stamf. Pl. Coron.* 96.

Of

Of a Girl within Age, being taken and carried away. *West.* 158.

The like of a Daughter and Heireſs with Goods. *Stamf. Pl. Coron.* 174.

The like of a Widow, and Marrying her againſt her Will. *West.* 224.

For Burglary in the Night. *West.* 85, 225, 245, *&c.*

For abetting Burglary and Theft. *Id.* 353.

For the like, and Goods taken away: *Co. Entr.* 352. *West.* 81, 82, 83. &c.

For the like in the Day. *West.* 291, 335.

The like of a Stable, or other Houſes. *West.* 204, 281, 282.

The like of a Church. *Dyer* 99.

For burning Houſes. *West.* 86, 87, 88, 268, 295.

See the late Act of Parliament for ſecuring Houſes from Fire, mentioned before. *Tit.* Houſe burning.

For Robbery, and Monies taken, *&c. Raſt.* 124, 125, 126. *West. Preſ.* 70, 190, 192, &c. *Hern.* 97, 148. *Cokes Ent.* 246. 358. *West.* 191.

For an Aſſault in the Highway, with an Intention to Kill or do a Robbery.

For Stealing of Cattle. *Raſt. Ent.* 124, 198. *West.* 206, 226. &c. *Co. Ent.* 359.

For Stealing of Horſes. *Co. Ent.* 359.

For Stealing the Goods of a Church, *&c. West.* 70, 196. *Stamf. Pl. Coron.* 95.

Againſt a Servant for taking his Maſter's Goods. *West.* 205, 207.

Againſt a Pick-Purſe. *West.* 169, 170, 266.

For knowingly receiving a Thief, and the Goods taken in his Cuſtody.

For

For pulling out Eyes, and cutting off Tongues. *West.* 103, 104.

Againſt Vagabonds, *Gypſies*. Weſt, 101, 102.

For an Aſſault and Maim. *West.* 336.

For Riots, Routs, *&c.* See in the Book, *page* 309, 310.

Againſt Malefactors, and Hunters in Parks, Forreſts, and Warrens. See alſo *page* 185.

For Forcible entring into Houſes and Lands, *&c.* See the Book, *page* 185.

For Barretry. *West.* 75, 203, 237, 257, 327, 338.

Againſt Ale houſe-keepers and Taverns receiving ſuſpected Perſons, and permitting unlawful Sports and Games. *West* 71, 121, 203, 237, 323, 324, 338, 355.

For Counterfeiting Deeds. *West.* 119, 40. *Aſſ.* 32.

For Maintenance. *West.* 89, 90, 137, 313, 351.

For Conſpiracy amongſt Tradeſmen, and to maintain Suits and Indictments, *&c.* *West.* 97, 98, 312. *Vide ante* Conſpiracy.

Againſt the Keeper of a Priſon, for Violence againſt a Priſoner, *&c.* *West.* 353. 12 *Co.* 127.

Againſt a Sheriff or Gaoler for eſcape of Felons. *West.* 105, 106, 272, 274.

For not Proſecuting of Hue and Cry. *West.* 125.

For not mending Highways, Bridges, *&c.* *West.* 347, 156, 157, 346. &c. *Co. Ent.* 358.

For not keeping Watch. *West.* 219, 220.

With many others, for which ſee. *Townſ* Tab. and *Cornwal's* Tab. *Tit.* Indictment.

Concerning the Forms of Indictments; where it ſhould be *Proditorie*, *Burgulariter*, *Felonice*, &c. *West.* 70. (And ſee in the Book, *Tit.* Indictments.) Forms, *&c.*

Where

Where it ſhould be *Precii vel ad valen'*. *Ibid.*

For Offences againſt one or more Statutes. *Ibid.*

The Style of a Gaol-delivery. *Raſt. En.* 264, 384.

For an Indictment at the Gaol-delivery of *Newgate*. 9 *Co.* 61.

An Indictment at *Guildhall*, and Trial thereupon at the Seſſions of *Newgate*. 9 *Co.* 114.

For Indictments delivered into *B. R.* by other Juſtices, and Trial thereupon. *Co. Entr.* 355, 356, 365. *Raſt. Ent.* 263, 264.

Indictment at the general Seſſions, removed by Writ into *B. R. Non Cul* thereupon, and a *Venire facias* awarded. *Co. Ent.* 358.

Traverſing Indictment. *Weſt.* 315. 366.

Judgment upon Indictment of Treaſon. *Raſt. Ent.* 413, 645. *Co. Ent.* 361, 423, 699.

Judgment in Felony. *Co. Ent.* 352, 355.

Where the Defendant acknowledges the Indictment. *Co. Ent.* 360, 362.

Simile by Two for Horſe-ſtealing, and Judgment *quod ſuſpendantur*. Co. Ent. 359.

Cur adviſare vult & Judic' quod Def. eat. quiet. Co. Ent. 363. upon an Indictment of Perjury.

Non Cul, &c. *Non Cul*, upon an Indictment for hunting in a Park, but that Coſts may be ſpared upon a Trial; Defendant prays to be admitted to a Fine, and is admitted accordingly. *Co. Ent.* 362.

Non Cul and Verdict, *quod eſt Cul*, & *Cur adviſare vult*. Co. Ent. 361.

Upon

Upon an Indictment of Murder before the Coroner, and a *Capias*; thereupon from *B. R.* Defendant ſurrendred himſelf, and pleaded *Non Cul.* and Bail thereupon, and a Verdict that he was *Non Cul* of the Murder, but of *Homicide*, and had no Goods: Bail, and Benefit of Clergy prayed, & *legit ut Clericus*, Co. Ent. 354.

Conviction of *Homicide ſe Defendendo* upon Trial by *Niſi prius*, and Pardon thereupon pleaded. *Co. Ent.* 356, 357.

Upon an Indictment of Murder, Defendant comes in according to the Rocognizance, pleads Not guilty, Bail; Verdict, that he is guilty of *Homicide*. A Pardon pleaded, and diſcharge thereupon. *Co. Ent.* 355.

The Principal pleaded Not guilty, and the Acceſſary acknowledged the Indictment; the Principal was couvicted, and Judgment *quod ambo ſuſpendantur*. Co. Ent. 352. 9 Co. 115.

The Defendants being indicted, were taken, and came into Court, being brought by the Sheriff, and pleaded Not guilty, and a Verdict that one was guilty as Principal, and the other as Acceſſary; Judgment, *quod Principalis ſuſpendatur*, & *Cur adviſare vult.* concerning Judgment againſt the Acceſſary; *Raſt. Ent.* 264. *Plo.* 473.

Where in Error to an Outlawry, upon an Indictment of Robbery; the Error aſſign'd, that the Defendant was beyond Sea at the Time of the Outlawry: The Attorney-General acknowledged the Error, and Defendant pleaded a Pardon, as to the Robbery. *Co. Ent.* 358.

Where

Where one outlawed for Murder, ask'd Benefit of Clergy, and had it. *Raſt. Ent.* 121.

Defendant ask Benefit of Clergy, *& Legit ut Clericus*; an Allegation that he was *Bigamus*, in marrying Two Wives, and a Writ thereupon awarded to the Biſhop. *Raſt. Ent.* 106.

Two Indictments againſt one, *Capias* awarded, and Not guilty pleaded, Verdict *quod eſt Cul*, and Judgment *quod ſuſpendatur*. Co. Ent. 352.

The Defendants ſeverally plead *Non Cul* and a ſpecial Verdict upon an Indictment of Murder. 9 *Co.* 63.

Bar, that he was *alias* indicted and acquitted upon a ſpecial Verdict. 4 *Co.* 44.

Compertum fuit per Inquiſition' coram Coronator. quod Murdrator fugit. Co. Ent. 354, 356.

A Woman convicted in *London*, being brought into *B.R.* ſaid ſhe was with Child, and a Writ *de ventre inſpiciendo* awarded. *Vet intrat'* 222.

A Writ to remove Priſoners indicted from one County to another. *Vet intrat'*. Ibid.

☞ *Note*, That in *Boulton*'s Juſtice for *Ireland* there are ſeveral Precedents, with their ſeveral Judgments, comprehended under the Head Treaſon. From page 3, to 35.

As for Conſpiracy to invade the Kingdom

The like to ſurpriſe Caſtles, and murder the Deputy, *&c.*

The like for Treaſonable Words.

For Burning Houſes, *&c.*

For a Traitor breaking Priſon.

For Coining, Counterfeiting, and Clipping of Money.

For Counterfeiting the Privy-Seal, *&c.*

For Murders by ſeveral Ways.

For Poiſonings, *&c.* Ther

There are alſo from page 35 to 36. ſeveral Indictments for Felonies of ſeveral Sorts:

As for Manſlaughter.

For pulling out Mens Eyes, and cutting out Tongues.

For Burglaries.

For Robbery on the Highway.

For Cutting Purſes.

For Stealing of Horſes, Cows and Sheep, *&c.*

For Priſon Breaking, and Eſcapes.

For Forgeries.

Againſt Servants, *&c.*

For Conjuration, Witchcraft, Bigamy, Buggery, *&c.*

Alſo *Præmunire's* of ſeveral Sorts, from fo. 66, to 72.

Alſo from fo. 72, to 113. there are ſeveral Indictments for fineable Offences.

As Indictments of Force and Riots.

So from fo. 113, to 144. for Frauds of ſeveral Sorts.

So from 144, to 158. For Omiſſions by Conſtables and others, and for not following Hue and Cries, Repairing Highways, *&c.*

Alſo from 158, to 172. for ſeveral other Abuſes;

As keeping Evil Rule, Bawdy Houſes, and unlawful Games.

For Barretry, *&c.*

For giving and receiving Liveries.

For procuring Servants to depart their Services, *&c.*

For Uſury.

For uſing Witchcraft, Enchantments, Charms, Sorceries, and the like.

Alſo in the Book entituled, *Officium Cleric Pacis*, are many Precedents, divided into an Alphabetical Table, which runs thus, *viz.*

1. Indictments againſt ſuch as are Acceſſaries before the Fact, and after the Fact; alſo againſt Alehouſes, and for Aſſaults and other Abuſes.

2. Concerning Barretry, Baudy-Houſes, Bigamy, Blaſphemy, Bridges, Buggery, Burglary, and Burning of Houſes.

3. Concerning Carmen, Chance-medley, Church and Church yard, Common, Combination, Concubines, Conies, Conſpiracy, Conſtables, Cottages, Counterfeiting of Seals and Letters, *&c.* Cut-purſes.

4. Concerning Diſtreſſes, Diſturbers, and Dove-houſes.

5. Eating of Fleſh, Egyptians, Eſcapes, Extortion.

6. Falſe Impriſonment, Felonies, Forcible Entry, Forgery, Foreſtallers.

7. Games unlawful, Guilding of Goldſmiths, Greyhounds keeping, *&c.*

8. High-Treaſon, Highways, Hue and Cry, Hunting, and Husbandry.

9. Inchantments, Ingroſſing, Inmates, Jurors.

10. Kidnappers.

11. Libellers, and Liveries giving.

12. Maintenance, Manſlaughter, Maſſes, Mayhems, Meats unwholſom, Meetings unlawful, Miniſters, Money, Murders.

13. Nuſances.

14. Pavements, Perjury, Petit-Treaſon, Pheſants and Partridges, Pope's Authority extolling, Poiſonings, Priſoners breaking Priſon, Procurers, Purveyors, *&c.*

15. Rapes,

15. Rapes, Receivers, Recuſants, Regrators, Reſcues from Sheriffs and Bailiffs, Robberies, Rogues, and Riots.

16. Servants, Slanderers, Scandalous and Seditious Words, Soldiers, Spiritual Perſons, Starving Infants and Apprentices, Stealing of Horſes, *&c.* Subornations.

17. Trades uſing unlawfully, Treſpaſſes, Tillage.

18. Vagrants, Vagabonds, Virgins.

19. Uſury.

20. Concerning Watching, Widows and Wives being taken away; alſo concerning Witchcraft.

Precedents relating to Informations.

For Informations of Intruſion into the King's Lands. *Vide Raſt. Entr.* 387, 412. *Co. Ent.* 376, 378, 381, 385. 1 *Co.* 16, 26. *Vet. Intrac.* 224.

Information of Perjury committed by a Witneſs produced in Ejectment. *Sur. Ni. Pri. Co. Entr.* 367. *Clift's Ent.* 397, 399, 401.

For Subornation of Perjury in Chancery. *Id. Co. Ent.* 362.

Judgment upon the Statute of Perjury upon a Verdict. *Id.* 368.

A Bill, in Nature of an Information againſt a Juror upon a *Ni. Pri.* of Perjury in a Verdict. *Raſt. Ent.* 90.

For Forgery. *Bro. Red.* 453.

For Maintenance in the Exchequer. *Hern.* 494. *Vide Winch. Entr.* 504, 538.

For Extortion againſt the Sheriff. *Co. Ent.* 365.

Againſt an Under-Sheriff for taking 12 *d.* in the Pound for executing a *Fi. fa. Hern.* 501. *Vide* 1 *Brown.* 231, 238. *Bro. Red.* 454.

For ingroſſing and foreſtalling. *Hen.* 495, 507, 508. 1 *Brown.* 229, 230, 238. *Winch. Ent.* 499, 502, 511, 533.

With very many others for Things of more private Concern. Vide *Townſ. Tab.* and *Cornwal's Tab. Tit. eund.*

Entry of a Licence to compound, and of a Compoſition thereupon had. *Aſt.* 347.

See *Vidian's Entr.* 213, 215. *Winch. Entr.* 507.

An Information brought by the King's Coroner, concerning a Bond of *Felo de ſe.* 1 *Saund.* 270.

For Money receiv'd for Uſury, exceeding the Rate allowed by the Statute. 1 *Brown.* 229. *Vidian* 214. *Hanſ.* 100. *Bro. Red.* 454.

A Bill in the Nature of an Information, againſt Two, who for Money procured themſelves to be ſworn upon the Tales, to give a Verdict for the Defendant. 1 *Saund.* 300.

For riotouſly deſtroying a Park. *Clift's Entr.* 395, 403.

For Shooting with a Hand Gun, and Conviction thereof before a Juſtice of Peace. *Saund.* 262.

For keeping a Gaming-Houſe. 1 *Brown.* 232. See the Numbers of Rolls for Informations upon divers Statutes. 1 *Brown's Entr.* 229. *Rob. Entr.* 338.

See *in Officio Clerici Pacis*, from *pag.* 256, to 229, *&c.* Several Precedents of Informations

mations relating to Arts uſed without Licence; alſo concerning Beer, Cattle, Cloth, Coals, Conſtables, Cuſtom-houſe, Deer-ſtealing, Diſtreſſes, Foreign Goods, Freemen, Hides, Ingroſſing, Intruſion, Leather, Mayors, Pelts, Perjury, Seducers, Spiritual Perſons, Subſidies, Tranſportation of Corn, *&c.* Woods, and Wool, *&c.*

And for many others, with the Pleas in Bar, and Judgments. See *Cornwal's Tables, Tit.* Information.

Inquiſitions.

Inquiſitions of Death taken before Coroners. *Raſt. Ent.* 263. *Co. Ent.* 53, 353, 354. 5 *Co.* 120.

The like before Juſtices of *Oyer* and *Terminer*. *Co. Ent.* 355.

For an Inquiſition *ſuper viſum Corporis. Vide Offic. Cler. Pac.* 305, *&c.*

For an Inquiſition return'd by Commiſſioners, touching the Forfeiture of the Office of the Marſhal of the King's Bench. *Bro. Rediviv.* 375, *&c.*

See an Inquiſition found upon an Indictment of Treaſon, and an Outlawry thereupon. 2 *Lutwich Ent.* 996

FINIS.

THE TABLE.

A.

Abettors.

Abettors of Appeals. Page 1.
Abettors in Murders. Ibid.
Abettors in Treaſon. Ibid.

Abjuration.

Where formerly allowed, and when ouſted. page 2.
Abjuration, Oath, purſuant to 13 W. 3. ca. 6. 1 Ann. cap. 22. 4 Ann. cap. 8, 6 Ann. cap. 14. *page* 3.

Acceſſary, *vide* Principal.

Where the Principal being acquitted, the Acceſſary ſhall not be arraigned. 3.
Upon a New Felony made by the Statute. Ibid.
Acceſſary to an Acceſſary. Ibid.
When in an Appeal the Acceſſary may be outlawed. Ibid.
No Acceſſaries in Treaſon. Ibid.
In Petit-Treaſon debarred of Clergy. Ibid.
Where all are Principals in Felony. 4.
So of a Perſon abſent. Ibid.
Acceſſaries before and after a Felony. Ibid.
Where to be tried. Ibid.

The TABLE.

Acquitted as Acceſſary, Arraigned as Principal. Page 4.
Two Principals, and one Acceſſary. 5.
Buyers or Receivers of Stolen Goods knowingly. Ib.
Acceſſary to Stabbing another. Ibid.
Trials of Engliſhmen, *Acceſſaries in* Scotland. 6.

Accuſation.

How to be Attached, and anſwer upon Accuſations. 6.

Acquital.

Where Acquittal of one, is the Diſcharge of another. Page 6. *Vide* Auterfoits, *&c.*

Action.

Where Action lies after Trial, and Acquital of Felony for Malicious Proſecution. 7.

Additions.

Of Additions of Names, Eſtates, Degrees, Myſteries, &c. *in Actions, Appeals, and Indictments.* 7. 8, 9, &c.

Adjournment

Of a Court by a Lord High Steward. 12.
Continuance upon Adjourning Seſſions. Ibid.
Adjournment of the Term. Ibid.
Of a Jury. Ibid.
Of Indictments, &c. *in the Præter Tenſe.* Ibid.

Admiralty.

Where the Original is of the Admiral's, Juriſdiction. 12.
Where ſuch Juriſdiction ſhall be executed by Commiſſion of the Admiralty. Ibid.
Of the Officers Oath upon Trials of Offenders. 13.

Affidavit.

Indictment if Perjury thereupon. 13.

Affray.

The Definition thereof. 13.
If Weapons drawn. Ibid.
Upon Words or Menace to kill. Ibid.

What

What a Private Man may do. Page 13.
What an Officer may, as Constable, Justice of Peace, &c. 14.
Precedents of Indictments thereupon. Ibid.
Aiders *and* Abettors. *Vide* Accessary *and* Appeal, *&c.*
Concerning Aiders and Abettors, in the conveying and driving of Wool, contrary to the Statutes. 15.
By many Statutes, Aiders, &c. *are made Principals.* 16.
Aiding *and* Assisting.
Where these Words are necessary. 16.
Where Aiding and Assisting Cuidam Ignoto, *High-Treason.* Ibid.
Alien.
Concerning Aliens and Denizens, and of Denization and Naturalization. 16, 17, 18.
Of the late Act for Naturalizing Foreign Protestants in Great Britain *and* Ireland. 19, 20.
Pleadings relating to Aliens. 19.
Alteration.
Of Whitsuntide *and* Lammas *Terms, in the Court of* Exchequer *in Scotland.* 20.
Ambassadors.
When they may be punished by the Laws of this Realm, and when not. 21.
No Writs to arrest an Ambassador, or his Domesticks, &c. *pursuant to a late Act of Parliament.* 22, 23.
Amercement.
Of a Township upon the Escape of a Felon, &c. 24.
Amercement of Jurors, how and for what. Ibid.
Appeals.
Of the divers Sorts thereof. 25.
Appeals of Murther, &c. Page 27. *And by whom.* Ibid. *and* 28, 29.
Appeal of Robbery, Burglary, or Larceny. 33.

Appeal.

Appeal of Rape. Page 35.
Proceedings in Appeals. How and for what, 36.
Appeal by Original Writ. 38.
Abatement therein. 39. 40, 41.
Bars therein. 43.
Of Appeals at Common Law. 45.
Proceſs in Appeal. 47.
Judgment in Appeal. 49.
Precedents concerning Appeals. 50.
Upon Maim. Ibid.
Upon Appeals for Robbery. 51.
Upon Appeals of Death. Ibid.
Upon Appeals of Rape. 52.

Approver.

Who is or may be an Approver, and who not. 52.
In what Caſes. 53.
Of what Offences. Ibid.
Before whom. Ibid.
How demeaſned after Appeal. Ibid.
Of his Execution, if he make a falſe Appeal, or fail in his Repitition. Ibid.
What Proceſs upon his Appeal. Ibid.
If he confeſs his Appeal falſe. Ibid.

Arraignment.

How Priſoners ſhall be arraign'd. 54.
Without Irons at the Bar. Ibid.
After Felony for Treaſon. Ibid.
Indicted or appealed at the Suit of one, and arraigned and tried at the Suit of another. Ibid.
Where the firſt Attainder is pardoned. Ibid.
Of the Defendants pleading thereupon, and of the Replication, Rejoinder, and Iſſue. Ibid. and 55.
When the Writ is abated. Ibid.
When one Arrained confeſs'd more. Ibid.
Arraignment after Acquittal in Appeal. Ibid.
Of Bigamus after Outlawry. 56.

Arresting of Persons.

For Felony by private Persons. Page 56.
After Commitment, how discharged. Ibid.
Upon a Hue and Cry, who may arrest. Ibid.
In Aid of an Officer, how. Ibid.
By a publick Officer, with and without Process. Ibid.
Arrest of Judgment. 57.

Arson *or* House-burning.

Where 'tis Felony, &c. 57.
Simile *of burning Barns, and Stacks of Corn.* 58.

Assize.

What is the Nature of this Writ, and of the several Divisions thereof, how to be arraigned and tried, and of the View, Process, Bar, and Pleadings therein. 58. 59, &c.
For Precedents in Assize. 62.

Attainder.

Concerning the falsifying of Attainders, and by whom. 62.
Pleading of Attainders. 63.
Reversing Attainders. p. 64. *and for what Errors.* Ibid.

Attaint *of* Jurors.

What it is, against whom, and for what. 65.
Upon what Inquest it lies. 67.
In what Court it lies. 68.
For what Causes it lies. 69.
The Default of the Court, concerning it. Ibid.
At what Time it lies. 70.
Who shall have it. Ibid.
In what Things the false Oath may be assigned, and how. 71.
What subsequent Act will take away an Attaint. 72.
What shall be a good Bar in Attaint. Ibid.
What Pleas the Petit-Jury may plead. 73.

What

What Evidence must, or may be given. Page 74
Judgment in Attaint. 75
Precedents in Attaint. 76. &c.

Auterfoits Acquit, *&c.*

The Nature of this Plea. How, when, and where. 78
Simile *of Auterfoits Convict.* 79
Simile *of Auterfoits Attaint.* 80

B.

Bail.

Who are Bailable upon the Statute of West. 1. cap. 15.
How, when, where, and by whom. 82, &c.
Expoſition of this Statute. 83, 84, &c.
Certifying Recognizances of Bail. 89
Juſtices of Peace fined for Default. Ibid.
Felon bailed. Ibid.
Difference between Bail and Mainprize. Ibid.
Juſtice of Peace bailing where he ought not. 90
Where bailed before Clergy. Ibid.
Concerning the Power of Juſtices of Peace, &c. to bail. 91
Of all Offences below Felony. 92
Upon a Non liquet, *or where* Stat. indifferenter. 93
The Subſtance of the Habeas Corpus *Act, and concerning Bail thereon.* 94
Where exceſſive Bail ought not to be. 95

Bar. *Vide* Auterfoits, Acquit, *&c.*

Where Clergy upon Indictment is Bar to an Appeal. 96

Baron. *Vide* Peer.

Where a Baron is a Witneſs. 96
Where no Evidence againſt the Honour of a Peer. Ibid.

Barretors.

Who is a Barretor, and for what Misdemeanours. Page 97.

Bastard *and* Bastardy.

Concerning them, and concerning the VVrit de Ventre inspiciendo. 99.

How Bastardy shall be tried. 101.

In what Actions, &c. 102.

For Pleas of Bastardy. 103.

Of the Inquisition, Proclamations, Certificate, Verdict therein. 104.

Battery.

Concerning one being beaten in Westminster-Hall. 105.

VVhere Pardon of Battery extends to wounding. Ibid.

Bills *of* Exception.

That the Statute extends only to Civil Causes. 105.

Breach of the Peace, Vide Affray.

Breach of Prison, Vide *Prison-breaking.*

Brokers.

That a common Broker is an unlawful Trade. 106.

VVhere no Sale to them alters the Property. Ibid.

Forfeiture if they refuse to shew Goods so sold, or pawn'd to them. Ibid.

Difference between them and the ancient Brokers. Ibid.

Forfeiture by City Brokers. Ibid.

Burglary.

What shall be accounted Burglary, and breaking and entring of Houses, with intent to commit Felony. 107.

By Servants evil Intent. 108.

When it lies for the Owner, and when for an Inmate. Ibid.

Where some Rooms are severed, &c. 109

Of Felony by Landlord or Lodgers. Ibid. *and* 110.

Of

Of ſtealing Goods, by Day or by Night, in Shops, &c. tho' not broke open. Page 110.
Rewards to ſuch as take Perſons guilty of Burglary, &c. 111.
Of Perſons knowingly receiving ſtolen Goods, and of their Puniſhment. 112.

Burning in the Cheek.

This Puniſhment repealed. 112.

Burning of Houſes. *Vide* Arſon, *& poſtea* Houſe-burning.

C.

Carrier.

Concerning his being robb'd of Goods; and of his embezelling, &c. part of the Goods delivered him to carry. 113.

Certiorari.

Where, and where not to be allwed upon Indictments, and of the Return thereof. 113.

Challenge.

Concerning Challenges of Jurors; and what Challenges ſhall be allowed or not; alſo concerning Challenges Peremptory, and Challenge for Cauſe. 114, &c.

Champarty. *Vide* Maintenance.

Chancemedly.

Concerning it, Manſlaughter, aud Murder, and how they differ in divers Reſpects. 118.
Alſo of Death per Infortunium, *and what ſhall be forfeited as a Deodand, and when.* 119.
Concerning a Man ringing a Bell being ſtrangled with the Rope. 120.

Clergy.

Concerning it, and in what Caſes it is allowed and in what it is taken away. From 121, *to* 131.

Clipping Money, counterfeiting Coin, &c. and of the making or mending Tools and Inſtruments for that Purpoſe. Page 131, 132, &c.
Colouring, gilding, or waſhing, in Imitation of current Gold and Silver. 132.
Blanching Copper for Sale, &c. or mixing it to imitate Standard-Gold, &c. 133.

Commitment.

Where Oath ought to be before a Commitment by a Juſtice, and how it ought to be by a Juſtice. 134, &c.
No Subject to be ſent Priſoner into Foreign Parts. Ibid.
When Party not to be diſcharged till indicted, &c. Ibid.

Confeſſion.

Where after Not Guilty pleaded. 136.
Where before a Juſtice of Peace or Privy-Councellor: What Evidence it ſhall amonnt to. Ibid.

Conjuration, Enchantmenr, *and* Witchcraft.

Concerning the ſame; and of Invocators, Sorcerers, Charmers, Inchanters, Love-procurers, and ſuch as pretend to tell of Goods loſt or ſtolen; and what Puniſhment the Law has provided againſt ſuch Offenders. 137.

Conſpirators.

Of Writs and Indictments againſt them. 138.

Continuance and Diſcontinuance.

Of Pleas in Appeal, &c. 139.

Contra Pacem.

Indictment, contra Pacem, *of Two Kings.* 139.

Conviction.

Conviction quaſh'd. 139.

Vide Auterfoits, Acquit.

Copy.

Where Copy of the Indictment and of the Jury are allowable. 140.

Coroner.

Coroner.

Concerning his Office and Power, as to Indictments, Appeals, Depositions, &c. Page 141.

Council.

Allegations for Prisoner to obtain Councel; who may be of Councel; and in what Cases allowed. 142.

County.

Where 'tis sufficient to prove the Fact done in the County. 143.

Courts.

Where Proceedings are to be had in Capital Causes. 143.

Cursing and Swearing.
Cutting out Tongues, &c.
Vide Appeal.

D.

Deceit, Covin, Collusion, *and* Fraud.

Concerning them in several Respects, by Deeds and Assurances, &c. 144, &c.
Deceit and Covin by Artificers and Workmen. 148.
To these are added, Deceit by Forestallers, Regrators, and Ingrossers. 149, 150.
Also of Exaction and Extortion by Officers, &c. 151.
Also concerning Usury and Usurers. 152.

Defence.

Defence to be made for Prisoners; concerning it. 154

Demurrer.

That it amounts to Confession of the Indictment. 155.

Depositions.

Depositions taken before a Coroner, Justice, &c. *Vide* Evidence. 155.

E.

Error.

To reverse an Outlawry on Indictment for Treason, &c. Page 157.

Escape.

Concerning the Escape of Felons, &c. 157.
By Taking of Bail. 158.
When to be answered by the Sheriff, and when by the Gaoler. Ibid.
What Punishment or Amercement, &c. Ibid.

Evidence.

How they may make Use of Notes, &c. 158.
What Evidence will be admitted and allowed in several Respects and Causes. 158, 159, &c.

Exaction. *Vide* Deceit.

Examination.

Of Felons, &c. *how to be taken, how subscribed, and how given in Evidence.* 162.

Exception.

Against Witnesses, &c. 163.

Execution

Must be pursuant to the Judgment, &c. *with several other Particulars relating thereto.* 164, &c.

Extortion. *Vide* Deceit.

F.

Falsifying Attainder. 166.

Felonies.

Concerning them in several Respects; and the Punishment thereof. 166, 167, 168, &c.

Felo de se.

Concerning him, his Age, Death, Forfeiture, &c. 175.

Feme Covert.

No Evidence againſt her Husband nec e contra, *&c.* Pag. 176, alias 178.

Fighting, &c. *in the Church-yard.* Ibid.

Fines.

Upon Conviction of Criminals, &c. Ibid.

Forcible Entry and Detainer.

What theſe are; *Fines thereon*; *Removal of the Force, and Reſtitution made by Juſtices*, &c. 177, 178, &c.

Proceſs thereon, and Indictments, &c. 184, 185.

Forfeitures.

By Felons, &c. 186.

Vide Felony, Treaſon, *&c.*

Forgery, Perjury, *and* Subornation.

Concerning them, *from* 187 *to* 197.

Forger of falſe Deeds, &c. 187.

Precedents of Actions, Informations, &c. *thereon.* 191.

Perjury and Subornation. 192, &c.

See after in Tit. Maintenance.

Frauds and Perjuries.

Concerning the Stat. 29 *Car.* 2. *cap.* 3. Vide ante *in Deceit*, p. 147, &c.

Freſh Suit.

Concerning it. 197.

G.

Gaols, Gaolers, and Gaol-Delivery.

Concerning them. 198.

Goldſmith.

Fine and Puniſhment upon him for falſe Plate. 199.

Goods.

Concerning ſuch as are ſtolen, and of the Reſtitution thereof. 199.

Vide Burglary and Clergy.

Where Goods forfeited are undervalued. Ibid.

Grants

Grants by the King.
Of Felons Goods, &c. Page 200.

H.

Habeas Corpus.
To remove a Priſoner, &c. *Concerning it.* 201.
Habeas Corpus Act. *Vide* Bail.
Hereſie. 201.

Highways.
Concerning them, their Amendment and Enlargement, &c. 202.

Homicide.
Concerning it in ſeveral Reſpects. 202, 203, &c.

Hue and Cry.
Concerning it upon a Robbery, &c. *and who may arreſt the Offender.* 206.

Hearſay.
Where no Evidence by Hearſay. 207.

I.

Impriſonment.
Where and how Offenders ought to be impriſoned. 208.

Indictments,
Concerning them in ſeveral Particulars, and Words neceſſary therein, and of quaſhing them for Faults and Omiſſions, &c. 209, 210, &c.
Some Obſervations thereon from the Statutes. 216.
Reverſing an Indictment for Error. 217.

Infant.
Examination of Infants 218
Infant excuſed of Felony Ibid.

Information and Informer.
Concerning Informations in ſeveral Particulars. 219.
Concerning Informers. 221.
His Proſecution, Compoſition, and Puniſhment. Ibid, & 222.

Action popular, concerning it. Page 223.
Recognizance to be given by Informer 225.

Inquisition.

How taken by a Coroner or Justice of Peace, &c. 226.

Interruption.

Upon summoning up Evidence, &c. 227.

Intrusion.

By Heir before Homage to the King, &c. 228.
Information of Intrusion, where. Ibid.
Vide *Forcible Entry.*

Judgments in several Cases.

Concerning them. 229.

Jury and Jurors.

Concerning them in several Cases. 231, &c.
Observations from the Statute Law concerning them. 233, 234, 235, &c.

Justices.

Of Gaol-Delivery, Oyer and Terminer, Assize, and Justices of Peace, concerning them and their Authority. 245.

K.

King and Queen. 248

L.

Larceny.

How it is both simple and mixt, and those have several Divisions relating to several Particulars mentioned. 249, 250, &c.

London.

Concerning casting Rubbish, &c. *from Houses there, by which Manslaughter happens* 253.
Concerning Cheats there in Taverns. Ib.
Concerning Privilege of London *Juries.* Ib.

M.

Mayhem.
What is Mayhem, and of the Judgment therein. Page 254.
Malice, Envy, *and* Hatred.
Concerning them, either implied or expreſſed. 254.
Maintenance, Champarty, Embracery, *&c.*
Obſervations from the Statutes concerning them. 255, 256, &c.
Manſion-Houſe.
What ſhall be ſo accounted. 258.
Manſlaughter.
What it is, and what forfeited thereby, and how it may become Murder. 258.
Means.
Concerning the Agreement of a Fact in Subſtance, tho' not in Means. 259.
Medietas Linguæ.
Concerning it in Trials, and of what Aliens the Inqueſt may be. 260
Miſpriſions.
Of what Sorts, when in Felony or Treaſon, when poſitive or negative, &c. 260.
Murder *and* Manſlaughter.
Concerning them in many Particulars. 262, 263, 264, &c.
Mute.
Concerning being Mute upon Trials, &c. *and the Puniſhment thereof.* 269.
Mutiny, *Vide* Officers *and* Soldiers.

N.

Noli Proſequi. Vide Trial.
Non Compos, *Mad-man,* &c. 271.

Of Offences committed by them. Page 271

O.

Oath.

Concerning Evidence and Witneſſes to be upon Oath. 272

Officers *and* Soldiers.

Concerning their Mutiny, Trial, and Puniſhment. 273.

Overt-Act.

Concerning it, and what Acts amount thereto. 275, 276, *&c.*

Outlawry.

Concerning Grants of Outlaws Goods, &c. 278.

Oyer *and* Terminer.

Concerning Juſtices by ſuch a Commiſſion, and of their Power and Proceedings, &c. 278.

P.

Pannels.

Concerning the ſevering of the Pannels of Juries, and of Copies thereof to be delivered to Priſoners 280.

Papiſts Recuſant.

Concerning them. 280.

Pardons.

Concerning them, the Words neceſſary therein, with Obſervations from the Statutes relating to them. 281, 282, &c.

Particeps Criminis.

Concerning ſuch Perſons. 286.

Peer.

Concerning the Trial of a Peer, &c. 287.

Piracy.

To what it extends, and how triable, &c. 288.

Place.

Place.
Of laying Indictments. Page 289.
Pleas.
Concerning them in Cases capital, &c. 289.
Poisoning.
How it is wilful Murder, and concerning the Principals and Accidents therein. 291
Prayer.
By a Prisoner for a Tryal, &c. *and whether to be taken Disjunctive or Respective.* 291
Presentments.
By Justices, &c. *concerning them.* 292
Printing.
Of Treasonable Books. 292
Principals.
In Murder, &c. 293.
Prison-Breaking.
Concerning it. 293.
Prisoners. 294.
Proof.
Of a Hand-writing by Similitude in Treason, &c. 295.
Provision *and* Præmunire.
Concerning them. 295.
Provocation.
On a sudden, &c. *concerning it.* 297

Q.

Quarreling, *vide* Words.
Quashing Indictment. 298.

R.

Reprieve.
Concerning it. 299.
Rescue.
Of Felons, &c. 299.

Restitution

Of stolen Goods, &c. concerning it, Page 300.
Not of long Usage. 301

Riots, Routs, and unlawful Assemblies.

Concerning them. 303, 304, &c.
Indictments of Riots, &c. 309.

Robbery.

Concerning it in many Particulars. 310, &c.
Observation from the Statute Law, concerning it. 314, &c.

S.

Sheriffs Turn.

Concerning Indictments and Presentments taken there, 322

Se Defendendo, *Vide* Homicide.

Sessions.

Of certifying Recognizances, &c. thither, 322

Statutes.

Concerning Felonies, &c. made by Statutes, and of taking away Clergy. 323, 324, &c.

T.

Tales.

Concerning them. 329.
Where the Time may be falsified in Indictments, and where the Time of Fact, &c. is not material. 330.

Township.

Amerced for Escape of a Felon. Ibid.

Transportation

Of Offenders. 331.

Treasons.

Concerning them. 331, 332, 333, &c.

Note

The TABLE.

Note, *The Sum of all the Statutes for High-Treaſon, and Miſpriſion of High-Treaſon, begins (under ſeveral Alphabetical Heads or Diſtinctions) at* Page 350. *viz.*

Admiral. Page 350.
Aſſaſſinators. Ibid.
Attainder. 351.
Coins. Ibid.
Correſpondence. 353.
Forfeiture. Ibid.
Miſpriſion. Ibid.
Oaths. 354, *&c.*
Outlawry. 356.
Parliament. Ibid.
Peers. Ibid.
Pope. 357.
Præmunire. 358.
Scotland. 359.
Seals. 360.
Treaſon: Ibid.
Trials and Witneſſes in High-Treaſon. 361.

Treaſon-Petit, *or* Petit-Treaſon.

Obſervations thereupon 363.

Trials.

Concerning them in many Particulars. 364, 365, *&c*
Trials by Statute Law, concerning them. 369, 370, *&c.*

V.

Verdict.

General and Special, concerning them 376.

W.

Weſtminſter-Hall.

Speaking provoking Words there. 377.

Witch-

Witchcraft

Concerning it, the several Degrees, and Punishment thereof. Page 377.

Witness, *&c.*

Concerning Witness and Witnesses in many Particulars. 379, 380, *&c.*

Wives.

Concerning marrying two Wives, if in England, *or beyond Sea in* France, *&c.* 386.

Where the Husband kills the Wife in Adultery, &c. 387.

Where the Wife is in Danger of her Life from her Husband. Page 387.

Concerning an Heiress, how to be disposed of upon Security given. Ibid. &388.

Of an Heiress being taken away and married, and concerning the Proof of stealing an Heiress, &c. Ibid.

Words.

How they may tend to a Provocation of Quarreling, &c. 389.

Writing, *vide* Overt-Act, *&c.* *Ibid.*

PRECEDENTS.

Directions to many Precedents of Actions, Indictments, Informations and Inquisitions, *&c.* to which this Treatise hath Relation; as upon the Statutes of

Hue and Cry for Robbery. 390.

Pleas thereupon. 391.

Of Forgery and Perjury. 392.

Of Maintenance, Champarty, and Embracery. Ibid.

Against Officers for Extortion. Ibid.

Of Rape. 393.

Of Subornation. Ibid.

Of Usury. Ibid.

Several

The TABLE.

Several other Precedents, *viz.*

Challenge to the Array, &c. *concerning it.* Page 393.
Commitment of a Jury-man after Verdict Ibid.
Conspiracy, Precedents concerning it. 394.

Indictments.

Of Precedents relating to them. 394, 395. &c.
Forms of Indictments. 397.
Plea of Non Cul. &c. *to Indictments.* 398, *&c.*

Informations.

Of Precedents relating to them. 403.

Inquisitions.

Of Precedents relating to them. 405.

FH
MVSEVM
BRITANNICVM

BOOKS

BOOKS Printed for, and are to be Sold by *J. Walthoe*, in the *Middle-Temple*-Cloyſters.

FOLIO.

1. A General Abridgment of the Common-Law, Alphabetically digeſted under proper Titles, with Notes and References to the Whole. By *Knightley D'Anvers*, of the *Inner-Temple*, Eſq; Dedicated to the Lord-Chief-Juſtice *Holt*, with the Allowance of the Lord-Keeper, and all the reſt of the Judges.

2. Caſes argued and decreed in the High-Court of Chancery: The ſecond Edition; carefully corrected from the many groſs Errors of the former Edition. To which are added, References to the ancient and modern Books of the Law.

3. The ſecond Part of Caſes argued and decreed in the High-Court of Chancery; continu'd from the 30th Year of King *Charles* II. to the 4th Year of King *James* the II. To which are added, Select Caſes, ſolemnly argued and decreed (in the ſame Court,) by the late Lord Chancellor, with the Aſſiſtance of the Judges.

4. *Coke*'s Reports, with References to all the Ancient and Modern Books of the Law: In Eleven Parts.

5. *Coke* on *Littleton*, the 10th Edition: To which is added, his Compleat Copyholder, with References alſo to the Modern Books of the Law.

6. The Reports of Sir *Creſwell Levinz*, late one of the Juſtices of the Court of Common-Pleas, in 3 Parts. Licenſed by the Lord Keeper, and the Reverend the Judges.

7. A Collection of Select and Modern Entries, of Declarations, Pleadings, Iſſues, Verdicts, Judgments, *&c.* referring to the Caſes of Sir *Creſwell Levinz*'s Reports: The Judgments of the Court being added to each Precedent. With Notes and References to the Reports and Entries of the Law.

8. The Reports of Sir *Thomas Raymond*, late one of the Judges of the Kings-Bench and Common-Pleas.

9. *Dalton*'s Country Juſtice, containing the Practice of the Juſtices of Peaces, as well in their Seſſions as out, with Three Tables; and proper References to ſuch Acts of Parliament as concern the Office of a Juſtice of Peace; brought down to this Time.

10. *Cowell*'s Law Dictionary, being an Interpreter of Words and Terms uſed either in the Common or Statute Laws of this Realm, and in Tenures and Jocular Cuſtoms.

11. *Puffendorff* of the Law of Nature and Nations, in Eight Books. Tranſlated into *Engliſh* by ſeveral Hands. The 2d Edition, Corrected and Improved; with Notes.

12. A General Hiſtory of *England*, from the earlieſt Account of Time, to the Death of King *William*, in 3 Vol. in large Folio; with the Effigies of all the Kings and Queens, curiouſly Engraven on large Copper Plates.

13. *Lexicon Technicum*; Or an Univerſal *Engliſh* Dictionary of Arts and Sciences, explaining not only the Terms of Art, but the Arts themſelves. In 2 Vol. By *J. Harris*, D. D.

In Octavo *and* Twelves.

1. *De Jure Maritimo & Navali*; Or a Treatiſe of Affairs Maritime, and of Commerce, in 3 Books. The 6th Edition, with large Additions.

2. *Lex Cuſtumaria*; Or a Treatiſe of Copy-hold Eſtates. The 2d Edition, with Additions.

3. The

3. The Law of Laſt Will's and Teſtaments containing Rules for the Conſtruction of Laſt Wills.

4. A Treatiſe concerning Treſpaſſes, *Vi & Armis*, wherein the Nature of Treſpaſſes are clearly explicated, and the Gifts of the Actio ſtated.

5. *Modus Intrandi Placita Generalia*; Or the Entring Clerks Introduction, in 2 Parts.

6. The Modern Conveyancer; Or Conveyancing improved. Being a choice Collection of Precedents on moſt Occaſions, drawn after the manner of Conveyancing now in Uſe, by the greateſt Hands of the Age, in 3 Vol. The Third Edition, with large Additions.

7. *Inſtructor Clericalis*, in Four Parts. The Firſt, conſiſts in directing young Clerks in the Abbreviations of Words, in filling up and ſuing out Writs of the firſt Proceſs, in making up Iſſues &c. The Second, of choice and uſual Precedents for Declarations. The Third and Fourth of choice and uſeful Precedents for Pleadings by Rule and Precedent, as well in the *Kings-Bench* as *Common-Pleas*, with Variety of Notes, Arguments, and other Obſervations relating to the ſame. The Fifth and laſt Part is now in the Preſs, and will be finiſhed with all Speed, which makes it a compleat Syſtem of Pleading, running through all the Heads and Titles thereof.

8. The new *Retorna Brevium*, Collected from the many Printed Law-Books extant, concerning the return of Writs in the Courts of Chancery, Exchequer, Queen's-Bench, & Alphabetically digeſted in their proper Order. To which are added and intermix'd many ſpecial Modern Returns, not heretofore made Publick, with many ſpecial Notes and Obſervations thro' the Whole. Neceſſary for all Sheriffs and Under-Sheriffs, Clerks, Attorneys, Solicitors, Mayors, Bailiffs of Liberties, Coroners, & As alſo for the Officers of the Counties Palatine of *Cheſter*, *Lancaſter*, and *Durham*: With a com-

ple

pleat; Alphabetical Table, reſpecting the ſaid ſeveral Courts in their Order. By *R. G.* a Clerk of the Court of Common-Pleas.

Miſcellanies in *Octavo* and *Twelves*.

9. The *Roman Hiſtory* Compleat, in 4 Vol. The two Firſt Vol. done by Mr. *Echard*, and the two Laſt by a good Hand.

10. *Charron* of Wiſdom, in 2 Vol. Tranſlated into *Engliſh* by Dr. *Stanhope*. The 2d Edition Corrected.

11. *Rapin*'s Critical Works, in 2 Vol. Tranſlated into *Engliſh* by ſeveral Hands.

12. *Cole*'s Latin Dictionary.

13. The Solitary or Carthuſian Gardiner, containing the Method to make and cultivate all Sorts of Gardens; alſo the Compleat Floriſt; Tranſlated from the *French*.

14. A New Voyage to the *Levant*, containing an Account of the moſt remarkable Curioſities in *Germany*, *France*, *Italy*, *Malta*, and *Turkey*. By the *Sieur Du Mont*: Done into *Engliſh*. The 4th Edit.

15. A Compleat Body of Chirurgical Operations; Containing the whole Practice of Surgery, with Obſervations and Remarks on each Caſe. Illuſtrated with Copper Plates. By M. *De La Vauguion*: Done into *Engliſh*. The 2d Edition.

16. The Art of Prudence; Or a Companion for a Man of Senſe. The 2d Edition.

17. The Anatomy of Humane Bodies improv'd, according to the Circulation of the Blood, and all the Modern Diſcoveries. By M. *Dionis*. With an ample Diſſertation upon the Nature of Generation; and ſeveral new Syſtems.

18. The Compleat Surgeon; Or the whole Art of Surgery, explained in a moſt familiar Method. By M. *Le Clerc*. The 4th Edit. Enlarged.

19. The Hiſtory of the World, Eccleſiaſtical and Civil, from the Creation to this preſent Time. With Chronological Remarks. By the Learned M. *Chevreu*: In 5 Vol. By ſeveral Hands.

20. The

20. The Gentleman's Dictionary, in 3 Parts. 1. The Art of Riding the Great Horse. 2. The Military Art. 3. The Art of Navigation. Each Part done Alphabetically, from the 16th Edition of the Original *French*.

21 *Glossographia Anglicana Nova*; Or a Dictionary, interpreting such hard Words of whatever Language as are at present used in the *English* Tongue; with their Etymologies, Definitions, &c.

22. The Compleat Horseman: Or Perfect Farrier.

FINIS.